TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER, APPELLANT,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

FILED SEPTEMBER 2, 1958.
JURISDICTION NOTED DECEMBER 15, 1958.

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IN THE SUPERIOR COURT OF NORTHAMPTON COUNTY, STATE OF NORTH CAROLINA

LOUISE LASSITER

v.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

Before PAUL, J., August 1957 Term, Northampton Superior Court. PLAINTIFF Appealed.

ORGANIZATION OF COURT

BE IT REMEMBERED that a Superior Court for the County of Northampton is this day opened and held in the Courthouse in Jackson, North Carolina, on the fourth Monday before the first Monday in September, 1957, the same being the 5th day of August, 1957. Present: The Honorable Malcolm C. Paul, Judge of the Second Judicial District, presiding.

The following members of the Grand Jury report for duty: W. J. Long, Jr., Foreman, and others (naming them). Wilson W. Baird, Allen Brown and Johnnie Stancell are excused due to illness.

Then comes E. Frank Outland, Esq., Sheriff of said County, into open court and returns the following good and lawful persons by him summoned to serve as jurors for the said term of Superior Court, to wit, John Cross and others (naming them). Mrs. D. G. Britton and others (naming them) are excused. B. B. Tant, J. P. Hargrove [fol. 2] and W. H. Blowe are reported by the Sheriff "Not to be found in Northampton County," also W. H. Shakelford. The remaining 21 good and lawful persons are sworn in as petit jurors for the term.

Honorable E. R. Tyler, Solicitor for the Sixth Judicial District, is present on behalf of the State.

The following proceedings are had:

At 4:00 P.M. Court takes a recess until Tuesday morning, August 6, 1957, at 10 o'clock.

/s/ M. C. Paul
JUDGE PRESIDING.

Court opens, pursuant to a recess, Friday morning, August 9, 1957, at 10 o'clock.

The following proceedings are had:

STIPULATIONS OF COUNSEL:

— (The contents of this Stipulation appear elsewhere in this record.)

JUDGMENT:- (The contents of this Judgment appear elsewhere in this record.)

At 12:45 P.M. Court takes a recess.

/s/ M. C. Paul
JUDGE PRESIDING.

NORTH CAROLINA, NORTHAMPTON COUNTY

In the Matter of the Application for Registration as a Voter of Louise Lassiter

NOTICE OF APPEAL TO COUNTY BOARD OF ELECTIONS FROM DENIAL OF REGISTRATION BY PRECINCT REGISTRAR HELEN H. TAYLOR—June 22, 1957

Notice is hereby given that Louise Lassiter, who applied to the Registrar of Seaboard Precinct for registration as a voter on the 22 day of June, 1957, and who was denied registration by said Registrar, one Helen H. [fol. 3] Taylor, has appealed from the decision of said Registrar to the County Board of Elections. Notice is further hereby given that the full name of the applicant for registration is Louise Lassiter; that the applicant's age is 41 years; and that the applicant's address is Sea-

board, Northampton County, North Carolina, and correctly listed below.

Finally, Notice is hereby given that the reason for this appeal from the Seaboard Registrar's decision denying registration to the applicant, is that the applicant was denied registration because of the applicant's failure to submit to an educational test, which is presumably provided in North Carolina General Statutes 163-28, amended, and that the applicant in good faith contends that the said educational test is invalid, void and unconstitutional, and that applicant further contends that applicant is entitled to be registered without submission to the ordeal of the educational test.

This 22 day of June, 1957.

/s/ Louise Lassiter Applicant.

Address: Mrs. Louise Lassiter, Route 1,
Box 180, Seaboard, N. C.

BEFORE THE BOARD OF ELECTIONS

ORDER OF BOARD OF ELECTIONS

In the Matter of the Application for Registration as a Voter of Mary Ellen Edwards and Louise Lassiter.

This cause coming on to be heard and being heard by W. W. Grant, W. T. Outland and Russell Johnson, Jr., who comprise the Northampton County Board of Elections, and it being found as a fact by said Board that the Petitioners Louise Lassiter and Mary Ellen Edwards were refused registration on June 22, 1957, by the Regis- [fol. 4] trar of the Seaboard Precinct because of their refusal to read any section of the North Carolina Constitution, and it further being found as a fact that said petitioners refused on June 28, 1957, on the *de novo* hearing before the Board of Elections, to read any section of said State Constitution and it appearing to the Board that the law of North Carolina requires that each registrant read any section of said Constitution, it is therefore ordered: That Louise Lassiter and Mary Ellen Edwards be not registered and are not entitled to be

registered on the Registration Books of Northampton County because of their failure to comply with the Registration Laws.

/s/ Russell H. Johnson, Jr.
/s/ W. W. Grant

NOTICE OF APPEAL TO SUPERIOR COURT WAS GIVEN ORALLY BY ATTORNEY JAMES WALKER OF WELDON, N.C.

Before the County Board of Elections

NOTICE OF APPEAL TO THE SUPERIOR COURT.

Louise Lassiter

v.

Northampton County Board of Elections and Russell H. Johnson, Jr., Board Chairman, and W. W. Grant and W. T. Outland, all of whom constitute the full membership of said Board.

TO THE NORTHAMPTON COUNTY BOARD OF ELECTIONS:

NOTICE is hereby given that Louise Lassiter, who applied to the Registrar of the Seaboard Voting Precinct for registration as a voter on the 22nd day of June, 1957, and who appealed in writing to the County Board of Elections on the same day from the said Registrar's denial of registration, has appealed from the decision and order of the County Board of Elections, which is dated the 28th day of June, 1957, to the Superior Court of [fol. 5] Northampton County as is by law provided. NOTICE is further hereby given that a copy of the Notice of Appeal which was filed with the Registrar on the 22nd day of June, 1957, to her denial of registration to Appellant is attached to the INSTANT NOTICE and all statements therein made are made a part of this Paragraph with the same effect as if herein specifically set out.

This 28th day of June, 1957.

/s/ Louise Lassiter
Appellant and Applicant for Registration as a Voter.

NOTICE OF APPEAL TO COUNTY BOARD OF ELECTIONS FROM DENIAL OF REGISTRATION BY PRECINCT REGISTRAR HELEN H. TAYLOR

NORTH CAROLINA
NORTHAMPTON COUNTY

In the Matter of the Application for Registration as a Voter of Louise Lassiter.

Notice is hereby given that Louise Lassiter, who applied to the Registrar of Seaboard Precinct for registration as a voter on the 22 day of June, 1957, and who was denied registration by said Registrar, one Helen H. Taylor, has appealed from the decision of said Registrar to the County Board of Elections. Notice is further hereby given that the full name of the applicant for registration is Louise Lassiter; that the applicant's age is 41 years; and that the applicant's address is Seaboard, Northampton County, North Carolina, and correctly listed below.

Finally, Notice is hereby given that the reason for this appeal from the Seaboard Registrar's decision denying registration to the applicant, is that the applicant was denied registration because of the applicant's failure to submit to an educational test, which is presumably provided in North Carolina General Statutes 163-28, amended, and that the applicant in good faith contends that the said [fol. 6] educational test is invalid, void and unconstitutional, and that applicant further contends that applicant is entitled to be registered without submission to the ordeal of the educational test.

This 22 day of June, 1957.

/s/ Louise Lassiter Applicant.

Address: Mrs. Louise Lassiter, Route 1,
Box 180, Seaboard, N. C.

Before the Board of Elections

Certification of Transcript of Record By County Board of Elections

North Carolina
Northampton County

Before the County Board of Elections

Louise Lassiter

vs.

Northampton County Board of Elections and Russell H. Johnson, Jr., Board Chairman, and W. W. Grant and W. T. Outland, all of whom constitute the full membership of said Board.

This is to certify that the matter hereto attached, to wit: Notice of Appeal from denial of registration by Precinct Registrar Helen H. Taylor, Decision and Order of the Northampton County Board of Elections dated the 28 day of June, 1957, and Notice of Appeal to the Superior Court from the decision and order of the Board of Elections, which latter mentioned Notice of Appeal is dated the 28 day of June, 1957, constitutes a full, complete and accurate Transcript of Record of the matter, as the same appears from the Records of the Northampton County Board of Elections.

This 2 day of July, 1957.

/s/ Russell H. Johnson, Jr.
Title: Chairman
of Northampton County Board
of Elections.

[fol. 7] In the Superior Court of Northampton County

Stipulations of Counsel (Aug. Term, 1957)

Counsel for petitioner and counsel for respondents, being of the opinion that the resolution of this controversy depends upon a question of law and having heretofore waived a jury trial in the cause and consented that

the Court may hear and resolve said matter upon an agreed statement of facts, stipulate the following:

1. That the Petitioner herein, to wit, Louise Lassiter, is a Negro, is now a resident of Seaboard Voting Precinct of Northampton County, North Carolina, has been such resident continuously for more than 18 years, and was such resident on the 22nd day of June, 1957.

2. That the said Louise Lassiter is of voting age, to wit, being more than 21 years of age and that she was of such voting age on and before the said 22nd day of June, 1957.

3. That the said Louise Lassiter is not now one of the persons excluded from eligibility to register and vote within the contemplation, meaning and intent of Section 163-24, of General Statutes of North Carolina, and was not on the 22nd day of June, 1957, within any of the categories of persons excluded from registration and voting by said statute.

4. That the said Louise Lassiter, by virtue of her continuous residence in and claim of continuous residence in the aforesaid Seaboard Precinct, Northampton County, North Carolina, is not eligible to register as a voter in any other precinct in the State of North Carolina.

5. That the said Louise Lassiter is not now registered and never has been registered as a voter for the purpose of voting in the said Seaboard Precinct, nor in any other voting precinct within the State of North Carolina, nor in any other town, city or State.

6. That on the 22nd day of June, 1957, the said Louise [fol. 8] Lassiter, in due and normal course and within the hour limits prescribed, presented herself to the duly appointed and acting registrar of the said Seaboard Precinct, to wit, Mrs. Helen H. Taylor, and requested to be registered as a voter for and in a special election scheduled to be held on July 13, 1957, for the voting citizens of Northampton County.

7. That upon presenting herself to the said registrar, the said Louise Lassiter subscribed to the oath generally and usually required of applicants for registration.

8. That following the taking of and subscribing to said oath the said registrar, to wit, Mrs. Helen H. Taylor, presented to the said Louise Lassiter a printed copy of

the Constitution of the State of North Carolina and requested and required of the said Louise Lassiter that she read certain designated sections thereof.

9. That the said Louise Lassiter declined and refused to read the proffered sections of the said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

10. That the said registrar, to wit, Mrs. Helen H. Taylor, upon the declining and refusing of the said Louise Lassiter to read the proffered sections of the Constitution of North Carolina, then and there refused to register and did not register the said Louise Lassiter, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution of North Carolina in the English language.

[fol. 9] 11. That on the same day of refusal of registration to her, upon the ground hereinbefore set forth, to wit, on the 22nd day of June, 1957, the said Louise Lassiter gave written notice to the said registrar of appeal from said denial of registration by said registrar to the Board of Elections of Northampton County.

12. That on the 28th day of June, 1957, the appeal of the said Louise Lassiter from the denial of registration by the aforesaid registrar was heard by and before the Board of Elections of Northampton County, sitting and convened as a body and administrative board in the Courthouse building of Northampton County, in Jackson, North Carolina.

13. That the said Board of Elections of Northampton County, being duly constituted and convened, as aforesaid, heard and entertained the aforesaid appeal of the said Louise Lassiter *de novo*.

14. That in said hearing and as a part of said hearing to determine the eligibility of the said Louise Lassiter to register as a voter, the said Board of Elections requested of the said Louise Lassiter that she read certain desig-

nated sections of the Constitution of North Carolina from a printed copy of said Constitution supplied her.

15. That the said Louise Lassiter declined and refused the said Board's request and requirement that she read the proffered sections of said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and the laws of the State of North Carolina, and the Constitution and laws of the United States.

16. That the said Board of Elections, upon the said [fol. 10] Louise Lassiter's failing and refusing to read the proffered sections of the said Constitution, or any other sections thereof, issued a written order and directed that the said Louise Lassiter be denied registration as a voter in the Seaboard Precinct, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution of North Carolina in the English language.

17. That on the 28th day of June, 1957, the said Louise Lassiter filed and caused to be filed with the Board of Elections of Northampton County a written notice of appeal from said Board's denial of registration as a voter to the Superior Court of Northampton County.

18. That on the 5th day of July, 1957, the appeal of the said Louise Lassiter from the said Board in said matter to the aforesaid Superior Court was docketed in said Superior Court.

19. That the said Louise Lassiter, because of her lack of educational qualifications, on June 22, 1957, and continuously since said date until the present date, is unable to and has failed and refused to write or read, or attempt to write or read, any section of the Constitution of North Carolina, or any section of the Constitution of the United States in the English language.

20. That aside from her failure, refusal and inability to read or write any section or sections of the Constitution of North Carolina, or any section or sections of the Constitution of the United States in the English language,

the said Louise Lassiter meets the other statutory qualifications for eligibility to be registered as a voter in Seaboard Precinct, Northampton County, North Carolina.

21. That this cause is duly before the Superior Court [fol 11] of Northampton County at this term in conformity with Chapter 163 of the General Statutes of North Carolina for trial or hearing and decision of the matters herein involved.

/s/ James R. Walker, Jr.
/s/ Taylor & Mitchell
COUNSEL FOR PLAINTIFF.

/s/ E. N. Riddle
/s/ Russell H. Johnson, Jr.
COUNSEL FOR DEFENDANT.

In the Superior Court of Northampton County

MOTION OF LOUISE LASSITER FOR DIRECTED VERDICT AND FINDING AND DENIAL THEREOF

Now comes petitioner in the above entitled matter, to wit, Louise Lassiter, through her counsel, the undersigned, and moves the Court, upon the facts and evidence stipulated and presented herein and the applicable law, that a Directed Verdict and Finding be entered in her favor in this cause, upon the ground that the failure and refusal of the Registrar of the Seaboard Precinct of Northampton County and the failure and refusal of the Board of Elections of Northampton County to enter and cause to be entered her name upon the book of qualified registered voters because of her failure and refusal to read any section of the Constitution of North Carolina as a prerequisite to being so registered, as required by North Carolina General Statutes, Section 163-28, as amended, is unlawful, as being in violation of Article VI, Section 1 of the Constitution of the State of North Carolina, and in violation of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

Petitioner further moves the Court that upon the entry of such Directed Verdict and Finding the Court set aside the order and ruling of the said Registrar and the said

Board of Elections denying her such registration and enter an order directing said Registrar and the said Board of Elections to enroll and place her name upon the book of registered voters, without regard to and free of [fol. 12] any requirement that she read or write any section of the Constitution of North Carolina as a prerequisite to her being so registered.

This 9th day of August, 1957.

/s/ James R. Walker, Jr.
/s/ Taylor & Mitchell
Counsel for Petitioner.

The foregoing Motion of Petitioner is denied.

This 9th day of August, 1957. Plaintiff excepts.

/s/ M. C. Paul
Judge Presiding.

In The Superior Court of Northampton County

SPECIAL REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DENIAL THEREOF

Now comes Louise Lassiter, petitioner in the above entitled matter, through her counsel, the undersigned, and makes this special request of the Court that the Court make and enter the following Finding of Fact and Conclusions of Law, to wit:

FINDING OF FACT

That the Registrar of Seaboard Precinct of Northampton County and the Board of Elections of Northampton County failed and refused to register petitioner Louise Lassiter as a qualified voter upon the ground that the said Louise Lassiter failed and refused to read or write any section of the Constitution of North Carolina, as required by North Carolina General Statutes, Section 163-28, as amended.

CONCLUSIONS OF LAW

1. That the requirement by the Registrar of Seaboard Precinct and by the Northampton County Board of Elections, in application of the provision of Section 163-28 of General Statutes of North Carolina, as amended, that the [fol. 13] said Louise Lassiter be able to read or write any section of the Constitution of North Carolina, as a prerequisite to being registered as a qualified voter is unlawful, the same being in violation of Article VI, Section I of the Constitution of North Carolina, and in violation of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

2. That the said Louise Lassiter is entitled to be registered as a qualified voter in Seaboard Precinct of Northampton County free of and without regard to any requirement of reading or writing any section of the Constitution of North Carolina as a prerequisite to such registration.

Submitted, this 9th day of August, 1957.

/s/ James R. Walker, Jr.
/s/ Taylor & Mitchell
Counsel for Petitioner.

The foregoing Special Request for Finding of Fact and Conclusions of Law is denied. Plaintiff Excepts.
This 9th day of August, 1957.

/s/ M. C. Paul
Judge Presiding.

In the Superior Court of Northampton County

JUDGMENT OF PAUL, J.—August 1957 Term

This cause came on for hearing and was heard before the undersigned Judge Presiding at the above term of court. The parties, through counsel, announced that there was no dispute as to the facts, and that they had agreed in writing as to the facts involved in this hearing, copy of said facts being submitted to the Court.

After reading and considering the agreed facts, and after hearing argument of counsel for the plaintiff and the defendant, the Court is of the opinion that under said agreed facts plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton [fol. 14] County, North Carolina, for that said plaintiff does not meet the requirements of Chapter 163, Section 28 of the General Statutes of North Carolina.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, and that plaintiff's prayer for relief, as set out in her notice of appeal to this Court, be, and the same is hereby denied.

The costs of this action will be taxed against the plaintiff.

/s/ M. C. Paul
JUDGE PRESIDING.

In the Superior Court of Northampton County

APPEAL ENTRIES AND NOTICE OF APPEAL TO SUPREME COURT OF NORTH CAROLINA

To the entry and signing of the foregoing judgment, the plaintiff excepts and gives notice of appeal to the Supreme Court of North Carolina; notice being given in open court. Further notice waived. The plaintiff, by consent, is allowed 15 days to prepare and serve case on appeal; the defendant is allowed 15 days after service of said case on appeal to serve counter-case or exceptions. Appeal bond fixed at $100.00.

/s/ M. C. Paul
JUDGE PRESIDING.

In the Superior Court of Northampton County

EXCEPTIONS TO JUDGMENT

TO THE JUDGMENT rendered against the plaintiff on the 9th day of August, 1957, the plaintiff files the following EXCEPTIONS:

1. The plaintiff objects and excepts to the Judgment of the Court in that the Court erred in its legal conclusion that North Carolina General Statutes 163-28 is valid and in that the said statutory provision is unconstitutional and in conflict with Art. VI, Sec. I of the Constitution of N. C. and other provisions of the N. C. Constitution.

[fol. 15] The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28, whereas the purported legislative requirement of said test is a usurpation by the General Assembly of power which is retained in the people of North Carolina.

3. The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28 against the plaintiff's contention that the same is unconstitutional and invalid because of conflict with the Fourteenth Amendment to the Constitution of the United States, whereas the said educational test is, as contended by plaintiff, in conflict with the Fourteenth Amendment to the Constitution of the United States.

4. The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28 against the plaintiff's contention that the same is unconstitutional and invalid because of conflict with the Fifteenth Amendment to the Constitution of the United States, whereas the said educational test is, as contended by plaintiff, in conflict with the Fifteenth Amendment to the Constitution of the United States.

5. The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28 against the plaintiff's contention that the same is unconstitutional and invalid because of conflict with the Seventeenth Amendment to the Constitution of the United States, whereas the said educational test is, as contended by plaintiff, in conflict with the 17th Amendment to the Constitution of the United States.

[fol. 16] 6. The plaintiff objects and excepts to the Judgment of the Court in that the Court decreed that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, whereas plaintiff meets all lawful requirements for such registration.

This 14th day of August, 1957.

/s/ James R. Walter
501 West Third Street
Weldon, North Carolina

/s/ Taylor & Mitchell
125 East Hargett Street
Raleigh, North Carolina
ATTORNEYS FOR PLAINTIFF.

In the Superior Court of Northampton County

ASSIGNMENTS OF ERROR

Plaintiff groups her exceptions and assigns error as follows:

1. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same is unconstitutional by the standards of the Constitution of North Carolina and by the standards of Article VI, Section I, of the North Carolina Constitution in particular, which error is pointed up by plaintiff's EXCEPTIONS 1, 2 and 6 (R pp 14, 15) and by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

2. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same

[fol. 17] is unconstitutional by the standards of the Fourteenth Amendment to the Constitution of the United States, which error is pointed up by plaintiff's EXCEPTION #3 (R p 15), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

3. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same is unconstitutional by the standards of the Fifteenth Amendment to the Constitution of the United States, which error is pointed up by plaintiff's EXCEPTION #4 (R p 15), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

4. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same is unconstitutional by the standards of the Seventeenth Amendment to the Constitution of the United States, which error is pointed up by plaintiff's EXCEPTION #5 (R p 15), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

5. The Court below committed prejudicial and reversible error by decreeing that plaintiff is not entitled [fol. 18] to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, which error is pointed up by plaintiff's EXCEPTION #6 (R p 16), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding

of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

This 14th day of August, 1957.

/s/ James R. Walker, Jr.
/s/ Taylor & Mitchell

In the Superior Court of Northhampton County

STATEMENT OF CASE ON APPEAL

This is a civil action which was heard before his Honor Malcolm C. Paul without a jury at the August 1957 Term of Court. The parties expressly waived a jury trial with the assent of the Court. Attorney James R. Walker, Jr., of Weldon, North Carolina, and Attorney Herman L. Taylor, of the Raleigh Law Firm of Taylor and Mitchell, appeared for and represented the plaintiff. Attorney E. N. Riddle, of Jackson, North Carolina, and Attorney Russell H. Johnson, Jr., of Conway, North Carolina, appeared for and represented the defendant Board of Elections.

The parties to this action were in agreement as to the facts of this case and entered into WRITTEN STIPULATIONS of the facts agreed upon. These Stipulations are numbered 1 through 21 and were filed as a part of the Records in this cause. The said Stipulations, as they appear in the Record in this cause, are made an integral part of this paragraph to the same effect as if herein specifically set out.

Following the signing, making, execution and entry of the Stipulations mentioned in the foregoing paragraph, the plaintiff made a motion, which was reduced to writing, for a directed verdict and for a finding in her favor. [fol. 19] The motion was denied by the Court, and the Court's denial thereof and plaintiff's exception to such denial were noted at the foot of said motion by his Honor Malcolm C. Paul, Judge Presiding. The motion, the Court's denial of same and plaintiff's exception thereto are all a part of the Record in this cause, and plaintiff makes this matter, as it appears in the Record, an integral part of this paragraph as if herein specifically set out.

Following the denial of plaintiff's motion, plaintiff tendered to the Court a written Special Request for Findings of Fact and Conclusions of Law. This Special Request for Findings of Fact and Conclusions of Law was denied by the Court, and the Court's denial thereof and plaintiff's exception thereto were noted at the foot of said Special Request by his Honor Malcolm C. Paul, Judge Presiding. The Special Request herein mentioned, its denial and the exception to such denial are all a part of the Record in this cause, and plaintiff makes this matter, as it appears in the Record, an integral part of this paragraph to the same effect as if herein specifically set out.

The Court then entered judgment in this cause on Friday, August 9, 1957, in which it was "ordered, adjudged and decreed that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, and that plaintiff's prayer for relief, as set out in her notice of appeal to this Court, be, and the same is hereby denied." To the entry and signing of this judgment, plaintiff appealed in open Court to the Supreme Court of Notrh Carolina. Appeal bond was set at $100.00. Plaintiff's appeal entries were entered at the foot of said judgment by the Court. Said judgment and appeal entires are a part of the Record in this cause and the same, as they appear in the Record, are made an integral part of this paragraph to the same effect as if herein specifically set out.

[fol. 20] On the 15th day of August, 1957, plaintiff filed with the Clerk of Superior Court six numbered Exceptions to the Judgment of the Court and also five Assignments of Error. The Exceptions to Judgment and Assignments of Error, as they appear in the Record of this cause, are hereby made an integral part of this paragraph to the same effect as if herein specifically set out.

Respectfully submitted,

/s/ James R. Walker, Jr.
Weldon, North Carolina

/s/ Taylor and Mitchell
Raleigh, North Carolina
ATTORNEYS FOR PLAINTIFF.

SERVICE of the above Statement of Case on Appeal in the case of Lassiter v. Northampton County Board of Elections, consisting of 3 pages, is hereby accepted and receipt of a copy of the same is hereby acknowledged.

This 19th day of August, 1957.

/s/ E. N. Riddle.

In the Superior Court of Northampton County

STIPULATION AS TO RECORD

It is stipulated by and between counsel for plaintiff and counsel for defendant that the foregoing Statement, consisting of 3 pages, together with the Judgment Roll, shall constitute the case on appeal in the foregoing cause.

This 19th day of August, 1957.

/s/ James R. Walker, Jr.,
of Counsel for Plaintiff.

/s/ E. N. Riddle,
of Counsel for Defendant.

[fol. 21] IN THE SUPREME COURT OF NORTH CAROLINA
No. 170—Northampton

Louise Lassiter

v.

Northampton County Board of Elections

OPINION—April 9, 1958

Appeal by plaintiff from Paul, J., at August 1957 Term, of Northampton.

Civil proceeding predicated upon denial by the Registrar of Seaboard Voting Precinct, Northampton County, North Carolina, of application of plaintiff, Louise Lassiter, 41 years of age, for registration as a voter in said precinct for the reason that she, the plaintiff, failed to submit to an educational test required by General Statute 163-28 amended, of the State of North Carolina.

Counsel for petitioner and counsel for respondents, being of opinion that the resolution of this controversy depends upon a question of law, and, having waived a jury trial in the cause, consented that the court might hear and resolve said matter upon an agreed statement of facts, stipulate the following:

"1. That the petitioner herein, to wit, Louise Lassiter, is a Negro, is now a resident of Seaboard Voting Precinct of Northampton County, North Carolina, has been such resident continuously for more than 18 years, and was such resident on the 22nd day of June, 1957..

"2. That the said Louise Lassiter is of voting age, to wit, being more than 21 years of age and that she was of such voting age on and before the said 22nd day of June, 1957.

"3. That the said Louise Lassiter is not now one of the persons excluded from eligibility to register and vote within the contemplation, meaning and intent of Section 163-24, of General Statutes of North Carolina, and was not on the 22nd day of June, 1957, within any of the categories of persons excluded from registrtaion and voting by said statute.

"4. That the said Louise Lassiter, by virtue of her continuous residence in and claim of continuous residence in the aforesaid Seaboard Precinct, Northampton County, North Carolina, is not eligible to register as a voter in [fol. 22] any other precinct in the State of North Carolina.

"5. That the said Louise Lassiter is not now registered and never has been registered as a voter for the purpose of voting in the said Seaboard Precinct, nor in any other voting precinct within the State of North Carolina, nor in any other town, city or State.

"6. That on the 22nd day of June, 1957, the said Louise Lassiter, in due and normal course and within the hour limits prescribed, presented herself to the duly appointed and acting registrar of the said Seaboard Precinct, to wit, Mrs. Helen H. Taylor, and requested to be registered as a voter for and in a special election scheduled to be held on July 13, 1957, for the voting citizens of Northampton County.

"7. That upon presenting herself to the said registrar, the said Louise Lassiter subscribed to the oath generally and usually required of applicants for registration.

"8. That following the taking of and subscribing to said oath the said registrar, to wit, Mrs. Helen H. Taylor, presented to the said Louise Lassiter a printed copy of the Constitution of the State of North Carolina and requested and required of the said Louise Lassiter that she read certain designated sections thereof.

"9. That the said Louise Lassiter declined and refused to read the proffered sections of the said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

"10. That the said registrar, to wit, Mrs. Helen H. Taylor, upon the declining and refusing of the said Louise Lassiter to read the proffered sections of the Constitution of North Carolina, then and there refused to register and did not register the said Louise Lassiter upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any [fol. 23] section of the Constitution of North Carolina in the English language.

"1. That on the same day of refusal of registration to her, upon the ground hereinbefore set forth, to wit, on the 22nd day of June, 1957, the said Louise Lassiter gave written notice to the said registrar of appeal from said denial of registration by said registrar to the Board of Elections of Northampton County.

"12. That on the 28th day of June, 1957, the appeal of the said Louise Lassiter from the denial of registration by the aforesaid registrar was heard by and before the Board of Elections of Northampton County, sitting and convened as a body and administrative board in the Courthouse building of Northampton County, in Jackson, North Carolina.

"13. That the said Board of Elections of Northampton County, being duly constituted and convened, as afore-

said, heard and entertained the aforesaid appeal of the said Louise Lassiter *de novo*.

"14. That in said hearing and as a part of said hearing to determine the eligibility of the said Louise Lassiter to register as a voter, the said Board of Elections requested of the said Louise Lassiter that she read certain designated sections of the Constitution of North Carolina from a printed copy of said Constitution supplied her.

"15. That the said Louise Lassiter declined and refused the said Board's request and requirement that she read the proffered sections of said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, and the same being in violation of the Constitution and the laws of the State of North Carolina, and the Constitution and laws of the United States.

"16. That the said Board of Elections, upon the said Louise Lassiter's failing and refusing to read the proffered sections of the said Constitution, or any other sections thereof, issued a written order and directed that the said Louise Lassiter be denied registration as a voter in the Seaboard Precinct, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequi- [fol. 24] sites for registration, namely, reading any section of the Constitution of North Carolina in the English language.

"17. That on the 28th day of June, 1957, the said Louise Lassiter filed and caused to be filed with the Board of Elections of Northampton County a written notice of appeal from said Board's denial of registration as a voter to the Superior Court of Northampton County.

"18. That on the 5th day of July, 1957, the appeal of the said Louise Lassiter from the said Board in said matter to the aforesaid Superior Court was docketed in said Superior Court.

"19. That the said Louise Lassiter, because of her lack of educational qualifications, on June 22, 1957, and continuously since said date until the present date, is unable to and has failed and refused to write or read, or attempt to write or read, any section of the Constitution

of North Carolina, or any section of the Constitution of the United States in the English language.

"20. That aside from her failure, refusal and inability to read or write any section or sections of the Constitution of North Carolina, or any section or sections of the Constitution of the United States in the English language, the said Louise Lassiter meets the other statutory qualifications for eligibility to be registered as a voter in Seaboard Precinct, Northampton County, North Carolina.

"21. That this cause is duly before the Superior Court of Northampton County at this term in conformity with Chapter 163 of the General Statutes of North Carolina for trial or hearing and decision of the matters herein involved."

Upon these stipulations and applicable law petitioner through her counsel moved the court for directed verdict and finding in her favor. The motion was denied.

Petitioner through her counsel then made special request that the court make and enter the following finding of fact and conclusions of law, to wit:

"FINDING OF FACT

"That the Registrar of Seaboard Precinct of Northamp-
[fol. 25] ton County and the Board of Elections of Northampton County failed and refused to register pertitioner Louise Lassiter as a qualified voter upon the ground that the said Louise Lassiter failed and refused to read or write any section of the Constitution of North Carolina, as required by North Carolina General Statutes, Section 163-28, as amended.

"CONCLUSIONS OF LAW

"1. That the requirement by the Registrar of Seaboard Precinct and by the Northampton County Board of Elections, in application of the provision of Section 163-28 of General Statutes of North Carolina, as amended, that the said Louise Lassiter be able to read or write any section of the Constitution of North Carolina, as a prerequisite to being registered as a qualified voter is unlawful, the same being in violation of Article VI, Section I of the Constitution of North Carolina, and in violation

of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

"2. That the said Louise Lassiter is entitled to be registered as a qualified voter in Seaboard Precinct of Northampton County free of and without regard to any requirement of reading or writing any section of the Constitution of North Carolina as a prerequisite to such registration."

This special request for finding of fact and conclusions of law is denied.

Thereupon, Judge Paul, presiding at August 1957 Term, entered judgment in which it appears that "After reading and considering the agreed facts, and after hearing argument of counsel for the plaintiff and the defendant, the court is of the opinion that under said agreed facts plaintiff is not entitled to be registered as a qualified voter in Seaboard Township, Northampton County, North Carolina, for that said plaintiff does not meet the requirements of Chapter 163, Section 28, of the General Statutes of North Carolina" and "it is therefore ordered, adjudged and decreed that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, and that plaintiff's [fol. 26] prayer for relief as set out in her notice of appeal to this court be, and the same is hereby denied * * *."

To the entry and signing of the foregoing judgment, plaintiff excepts and assigns a group of exceptions, and appeals to the Supreme Court of North Carolina, and assigns error.

Taylor & Mitchell,
James R. Walker, Jr. — For Plaintiff Appellant

E. N. Riddle,
Fletcher & Lake — For Defendant Appellee

Attorney General Patton,
Assistant Attorney General
Ralph Moody — Amicus Curiae.

WINBORNE, C. J.: The immediate question on this appeal is this: Is plaintiff, upon the agreed statement of facts, entitled to register for voting without meeting the test of

reading and writing any section of the Constitution of North Carolina in the English language, as required by General Statutes 163-28 as amended? The trial court was of opinion that plaintiff is not so entitled to register. This Court concurs in this ruling.

General Statutes 163-28 as amended by 1957 Session Laws of North Carolina, Chapter 287, Section 1, effective 12 April, 1957, under caption "Voters must be able to read and write; registrar to administer section," declares that "Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language," and that "it shall be the duty of each registrar to administer the provisions of this section."

And in the same act, 1957 Session Laws, Chapter 287, the General Assembly of North Carolina made provision (1) for appeal to County Board of Elections from registrar's denial of registration, G. S. 163-28.1; (2) for hearing *de novo* upon such appeal before County Board of Elections, G. S. 163-28.2; (3) appeal from judgment of County Board of Elections to Superior Court, and hearing thereon; and (4) appeal from judgment of Superior Court to Supreme Court, G. S. 163-28.3.

[fol. 27] The plaintiff applied for registration and refused to submit to, and qualify for the educational test,—that is, either to read or write any section of the Constitution of North Carolina as related in the foregoing stipulation of facts. And for this reason, and this reason alone, she was not admitted to registration.

At the outset she contends that the above provisions of G. S. 163-28 are unconstitutional by reason of conflict with the suffrage provisions of the Constitution of North Carolina.

In this connection it is appropriate to trace the history of Article VI, of the Constitution of North Carolina, omitting sections not necessary to inquiry in hand.

Beginning with the Constitution of the State of North Carolina "done in convention at Raleigh, the sixteenth day of March in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second," the pertinent provision as to "suffrage and eligibility to office" is contained in

Article VI, as amended by the Constitutional Convention of 1875, to read as follows:

"Section 1. Every male person, born in the United States, and every male person who has been naturalized, twenty-one years old or upward, who shall have resided in the States twelve months next preceding the election, and ninety days in the county in which he offers to vote, shall be deemed an elector. But no person, who upon conviction or confession in open court, shall be adjudged guilty of a felony or of any other crime infamous by the laws of this State, and hereafter committed, shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

"Sec. 2. Registration of Electors: It shall be the duty of the General Assembly to provide, from time to time, for the registration of all electors, and no person shall be allowed to vote without registration, or to register, without first taking an oath or affirmation to support and maintain the Constitution and laws of the United States, [fol. 28] and the Constitution and laws of North Carolina not inconsistent therewith * * *."

Thereafter the General Assembly of 1899 passed an act entitled "An Act to Amend the Constitution of North Carolina," P. L. 1899, Chapter 218, abrogating Article Six of the Constitution of North Carolina, and proposing a substitute thereof, to be submitted at the next general election on May 1, 1899, but it was not so submitted. However, the General Assembly, at its adjourned session of 1900, passed another act, Chapter 2, Laws of Adjourned Session 1900, entitled "An Act Supplemental to an Act entitled 'An Act to Amend the Constitution of North Carolina,' ratified February twenty-first, eighteen hundred and ninety-nine, the same being Chapter two hundred eighteen of the Public Laws of eighteen hundred and ninety-nine" reading as follows:

"The General Assembly of North Carolina do enact:

"Section 1. That Chapter 218, Public Laws of 1899 entitled 'An Act to Amend the Constitution of North Carolina,' be amended so as to make said act read as follows: 'That Article Six of the Constitution of North

Carolina be and the same is hereby abrogated, and in lieu thereof shall be substituted the following Article of the Constitution as an entire and indivisible plan of suffrage.

'Article VI

'Suffrage and Eligibility to Office

'(Section 1) Every male person born in the United States, and every male person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

(Sec. 2) He shall have resided in the Sate of North Carolina for two years, in the county six months, and in the precinct, ward, or other election district, in which he offers to vote, four months next preceding the election: Provided, that removal from one precinct, ward, or other election district, to another in the same county, shall not operate to deprive any person of the right to vote in the [fol. 29] precinct, ward or other election district from which he has removed until four months after such removal. No person who has been convicted or who has confessed his guilt in open court upon indictment, of any crime, the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote, unless the said person shall be first restored to citizenship in the manner prescribed by law.

'(Sec. 3) Every person offering to vote shall be at the time a legally registered voter as herein prescribed, and in the manner provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this Article.

'(Sec. 4) Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language; and before he shall be entitled to vote, he shall have paid on or before the first day of May, of the year in which he proposes to vote, his poll tax for the previous year, as prescribed in Article V, Section 1, of the Constitution. But no male person, who was, on January 1, 1867, or at any time

prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908.

'The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people of this State, unless disqualified under Section 2 of this Article: Provided, such person shall have paid his poll tax as above required.

'(Sec. 5) That this amendment to the Constitution is [fol. 30] presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together * * * .'"

Section 9 declares that if a majority of votes be cast at the next general election in favor of this suffrage amendment, it shall go into effect on July 1, 1902.

And machinery is provided for submitting the question to a vote of the people, and for determining and declaring the result of the election, and the certification and enrollment of the amendment among the permanent records of the office of Secretary of State.

The act was in force from and after ratification,—June 13, 1900.

The amendment to the Constitution was submitted to and approved by the qualified voters of the State at the next general election, and became Article VI of the State Constitution, and enrolled as required January 25, 1901.

Since the adoption of amendment last above mentioned, Article VI of the Constitution has been amended as follows:

(1) The General Assembly at its 1919 session, passed an act, Chapter 129, entitled "An Act to Amend the Constitution of the State of North Carolina," which amended Sections 2 and 4 of Article VI as follows: "VI. By striking out the first sentence of Section 2 of Article VI, and substituting therefor the following: 'He shall reside in the State of North Carolina for one year and in the precinct, ward or other election district in which he offers to vote, four months next preceding the election,'" and

"V. By striking out of Section 4 of Article VI the following: 'And before he shall be entitled to vote he shall have paid, on or before the first day of May in the year in which he proposes to vote, his poll tax for the previous year as prescribed in Article V, Section 1, of the Constitution.'" And the act declared that amendments IV and V as just stated be considered as one amendment and submitted to the voters of the whole State at the next general election. However, this was not [fol. 31] done. But at the extra session of 1920 the General Assembly passed Chapter 93 of the Public Laws of that session entitled: "An act to amend Chapter 129 of the Public Laws of 1919, and to further amend the Constitution of the State of North Carolina" as follows: "Section 1, Chapter 129 of Public Laws of 1919 be and the same is hereby amended so as to hereafter read as follows: 'Sec. 2. That the Constitution of the State of North Carolina be and the same is hereby amended in manner and form as follows * * *.'

"IV. By striking out that part of the first sentence of Section 2 of Article VI ending with the word 'election' before the word 'provided', and substituting therefor the following: 'He shall reside in the State of North Carolina for one year and in the precinct, ward or other election district in which he offers to vote, four months next preceding the election.'

"V. By abrogating the following requirement of Section Four of Article VI: 'And before he shall be entitled to vote he shall have paid, on or before the first day of May in the year in which he proposes to vote, his poll tax for the previous year as prescribed by Article Five, Section 1, of the Constitution' and by abrogating the follow-

ing proviso at the end of Section Four, Article VI: 'Provided such person shall have paid his poll tax as above required.'"

Moreover, the act, Chapter 93, Public Laws Extra Session 1920, declared that these amendments IV and V be considered as one amendment and submitted to the qualified voters of the whole State at the next general election. This was done, and the amendments were adopted and then enrolled by the Secretary of State on January 8, 1921.

The next amendment was proposed by the General Assembly 1945 Session Laws, Chapter 634, as follows: "Sec. 2. That Section 1 of Article VI of the Constitution of the State of North Carolina be amended to read as follows: 'Section 1. Who May Vote. Every person born in the United States, and every person who has been naturalized, 21 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at [fol. 32] any election by the people of the State, except as herein otherwise provided.'" This act repeals all laws and clauses of laws in conflict with its provisions. And the General Assembly authorized the submission of the amendment to the qualified voters of the State in the next general election. This was done, and the amendment was adopted, and then enrolled by the Secretary of State on December 10, 1946.

Lastly, the General Assembly at its 1953 session, Chapter 972, passed an act, the terms of which re-wrote the first sentence Section 2 of Article VI, so as to reduce the length of residence for voting in a voting precinct. And this was submitted to the qualified voters of the entire State at the 1954 general election and adopted, and then enrolled December 8, 1954.

Otherwise Article VI remained as adopted in 1902, as above recited.

The appellant contends that the indivisiblity clause is a "built-in extinguishment of the entire 1902 amendent," and, that, as a result, the suffrage provisions are relegated to Article VI as it appears in the Constitution of 1868 as amended by the constitutional convention of 1875, and, hence, there is no constitutional authority for the

General Assembly to enact G. S. 163-28. But attention is directed to the 1945 amendment for such authority.

In this connection we find in 16 CJS 67 Constitutional Law, Section 26, this pertinent declaration of principle: "As the latest expression of the will of the people a clause in a constitutional amendment will prevail over a provision of the Constitution or earlier amendment inconsistent therewith, for an amendment to the Constitution becomes a part of the fundamental law, and its operation and effect cannot be limited or controlled by previous constitutions or laws that may be in conflict with it."

So, irrespective of the questions now raised, as to the validity of the provisions of the 1902 amendment, and as to the effect thereof upon the provisions of Article VI of the Constitution of 1868 as amended by the Constitutional Convention of 1875, when the General Assembly came to consider the proposed amendment of 1945, Article VI then factually appeared intact and unchallenged. Therefore the provisions of the 1945 amendment must be considered inthe light of this fact. Thus, when, as to who may vote, the General Assembly declared that "Every person born in the United States, and every person who has been naturalized, 21 years of age, and possessing the qualifications set out in this article shall be entitled to vote * * *," the clause "possessing the qualifications set out in this article," was intended to mean, and was made certain by, [fol. 33] the qualifications appearing upon the face of the Article VI, so unchallenged. And one of those qualifications was set forth in Section 4 of Article VI wherein it was required that "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language."

"In the absence of constitutional inhibition part or all of an existing statute may, by specific and descriptive reference thereto, be incorporated into another statute." 82 CJS 123, Statutes Sec. 70(b).

Indeed, under such circumstances, "the provisions of a law which lapsed or has been repealed may be made a part of a new statute by referring to the law in general terms and without incorporating such provisions at length; reference may be made to an act which is repealed and succeeded by the act making the reference for the

purpose of adopting provisions of the succeded act; and repealed acts, some of which are invalid, may be adopted by reference for purposes of identification. The validity of the referring act is unaffected when it is complete within itself when read in the light of the matter so identified." 82 CJS 124, Statutes Sec. 70 (b).

And this Court in Lutz Industries v. Dixie Home Stores, 242 N. C. 332, 88 SE 2d, 333, opinion by Parker, J., declaring that "Unless prohibited by constitutional restrictions, reference statutes are frequently recognized as an approved method of legislation to avoid encumbering the statute books by unnecessary repetition," has applied the principle.

In this light, the 1945 amendment so proposed and later adopted had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act.

In this connection, a doctrine firmly established in the law is that a State Constitution is in no matter a grant of power. All power which is not limited by the Constitution inheres in the people, and an act of a State legislature is legal when the Constitution contains no prohibi- [fol. 34] tion against it. 11 Am. Jur. 619—Constitutional Law.

The Constitution of North Carolina, Article 1, Sec. 2, declares: "All political power is vested in, and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."

Moreover, it is noted in Guinn v. United States, 238 US 347, 59 L.Ed. 1340, that Chief Justice White of the Supreme Court of the United States, said: "No time need be spent on the question of the validity of the literacy test, considered alone, since as we have seen, its establishment was but the exercise by the State of a lawful power vested in it, not subject to our supervision, and, indeed, its validity is admitted. Whether this test is so connected with the other one relating to the situation on January 1, 1866, that the validity of the latter requires the rejection of the former, is really a question of State

law; but in the absence of any decision on the subject by the Supreme Court of the State, we must determine it for ourselves."

In this respect, the statute, then Section 5939 of Consolidated Statutes, later G. S. 163-28, was the subject of judicial interpretation by this Court, in the case of Allison v. Sharp, 209 N. C. 477, 184 SE 27, decided 26 February, 1936. And the Court, in opinion by Clarkson, J., held it to be constitutional.

And the provisions of G. S. 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of, or against any by reason of race, creed, or color. Hence there is no conflict with either the 14th, 15th or 17th Amendments to the Constitution of the United States.

For reasons stated, the judgment from which appeal is taken is

Affirmed.

[fol. 35] IN SUPREME COURT OF NORTH CAROLINA
Spring Term, 1958

No. 170

Northampton County

LOUISE LASSITER

v.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

JUDGMENT—April 21, 1958

This cause came on to be argued upon the transcript of the record from the Superior Court, Northampton County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable J. Wallace Winborne, Chief Justice, be certified to the said Superior Court, to the intent that the Judgment is affirmed. And it is considered and adjudged further, that the plaintiff and surety to the appeal bond, Herbert Brown do pay the costs of the appeal in this Court incurred, to wit, the sum of Thirty-five and 00/100 dollars ($35.00), and execution issue therefor.

[fol. 36] IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

* * * *

Appeal docketed	21 August 1957
Case argued	18 September 1957
Opinion filed	9 April 1958
Final Judgment entered	21 April 1958

CLERK'S CERTIFICATE

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and the pro-

ceedings in the above-entitled case, as the same now appear from the originals on file in my office.

I further certify that no petition to rehear has been filed, and that the time for filing such petition, under the rules of this Court, has expired.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the office in Raleigh, North Carolina, this 6 August, 1958.

ADRIAN J. NEWTON
Clerk of the Supreme Court of North Carolina.

By /s/ SARAH G. BARBEE
Deputy Clerk

[fol. 37] IN THE SUPREME COURT OF NORTH CAROLINA

* * * *

CERTIFICATE OF SERVICE OF NOTICE OF APPEAL.

(Omitted in Printing)

* * * *

[fol. 38] IN SUPREME COURT OF NORTH CAROLINA
Fall Term, 1957

* * * *

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 2, 1958

1. Notice is hereby given that Louise Lassiter, appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of North Carolina, filed on the 9th day of April, 1958, and which affirmed the judgment of the Superior Court of Northampton County, entered in this action on the 9th day of August, 1958, and in which latter mentioned judgment appellant, as defendant in the Superior Court of North Carolina was denied the right to register as a voter in said County, thereby being denied the right to vote. Notice is further hereby given that appellant hereby appeals to the Supreme Court

of the United Sttaes from the Final Judgment above mentioned of the Supreme Court of the State of North Carolina, which affirmed the judgment of the Superior Court of Northampton County, as above mentioned, for that, in the latter mentioned judgment, appellant was denied the right to register as a voter, upon the alleged grounds that she failed to qualify under the so called North Carolina literacy test.

2. Notice is also hereby given that appellant hereby appeal to the Supreme Court of the United States from the [fol. 39] Final Judgment above mentioned of the Supreme Court of the State of North Carolina, which affirmed the judgment of the Superior Court of Northampton County, as above mentioned, for that, in the latter mentioned judgtioned judgment, the statute of the State of North Carolina which purportedly requires a literacy test, to wit, North Carolina General Statute 163-28, was held to be valid and constitutional over apellant's objection and exceptions, as applied to her and to her right to register as a voter.

3. This appeal is taken pursuant to 28 U. S. 1257(2).

4. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

(a) The Record in this cause as filed and printed for the use of the Supreme Court of North Carolina during the Fall Term, 1957, number 172, and which Record indicated and included all of the proceedings which were held before the Superior Court of Northampton County, State of North Carolina and before the precinct registrar and the County Board of Elections.

(b) The Opinion of the Supreme Court of North Carolina, which was filed the 9th day of April, 1958.

(c) The mandate or judgment of the Supreme Court of North Carolina, which was entered upon the Opinion of the Supreme Court of North Carolina.

(d) Notice of Appeal to the Supreme Court of the United States, with attached Certificate of Service of Notice of Appeal.

5. The following questions are presented by the Appeal:

(a) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the Due Process Clause of the 14th Amendment to the Federal Constitution, in so far as it purports to [fol. 10] provide for a so called literacy test based upon the reading and writing of "any section" of the Constitution of North Carolina, as against appellant's contentions that the said test is arbitrary, capricious, subjective and without legal administrative standards?

(b) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the Equal Protection Clause of the 14th Amendment to the Federal Constitution, in so far as it purports to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is a discriminatory and arbitrary attempt to bestow the privilege of the franchise only upon the class of citizens who can read and write "any section" of the state Constitution?

(c) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the Privileges and Immunities Clause of the 14th Amendment to the Federal Constitution, in so far as it purports to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is an arbitrary denial of fundamental privileges and immunities of citizens of the United States.

(d) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the 15th Amendment to the Federal Constitution, in so far as it is based and predicated entirely upon the purported 1945 revival of the 1902 invalid and unconstitutional provisions, to wit, Article VI, Section 4 [fol. 41] of the Constitution of North Carolina, which constitutional provisions purport to provide voting privileges for certain white citizens without exposure

or subjection to the so called literacy test to which appellant, as a Negro, must be exposed and subjected?

(e) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the 17th Amendment to the Federal Constitution, in so far as it denies to appellant the opportunity to participate in federal elections solely because of the inability to read "any section" of the Constitution of North Carolina, as against appellant's contention that said statute denies to her fundamental rights which are guaranteed by the Federal Constitution?

This 1st day of July, 1958.

TAYLOR & MITCHELL

By /s/ SAMUEL S. MITCHELL
Samuel S. Mitchell
125 East Hargett Street,
Raleigh, North Carolina

/s/ JAMES R. WALKER, JR.
James R. Walker, Jr.
Weldon, North Carolina

[fol. 42] SUPREME COURT OF THE UNITED STATES

No. 229 Misc., October Term, 1958

Louise Lassiter, Appellant,

vs.

Northampton County Board of Elections

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—December 15, 1958

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Frankfurter took no part in the consideration or decision of this motion.

[fol. 44] SUPREME COURT OF THE UNITED STATES

No. 229 Misc., October Term, 1958

(Title Omitted)

ORDER NOTING PROBABLE JURISDICTION—December 15, 1958

APPEAL from the Supreme Court of the State of North Carolina.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 584 and placed on the summary calendar.

December 15, 1958

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1959 495326 977

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER,

Appellant,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

BRIEF OF APPELLANT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER,

Appellant,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

BRIEF OF APPELLANT

Opinion Below

The Supreme Court of North Carolina filed written opinion in this cause on the 9th day of April, 1958. The said opinion is reported in the following publications: 248 N.C. 102; 102 S.E. 2d 853; 3 Race Rel. Law Rep. 495. This opinion of the Supreme Court of North Carolina is reproduced in the printed record before this Court, pages 19 to 33. The Judgment of the Supreme Court of North Carolina, entered on the 21st day of April, 1958, and affirming the judgment of the Superior Court of Northampton County, is reproduced in the printed record before this Court, page 34. The judgment of the Superior Court of Northampton County was entered during the August, 1957, Term and is

reproduced on pages 12 and 13 of the printed record before this Court.

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered on the 21st day of April, 1958 (R. p. 34). Appellant's notice of appeal was filed in the Supreme Court of North Carolina on the 2nd day of July, 1958 (R. pp. 34-35). After the timely filing of Appellant's Statement as to Jurisdiction *in forma pauperis*, this Court entered an order granting appellant's motion for leave to proceed *in forma pauperis* on the 15th day of December, 1958, and on the same day entered an order noting probable jurisdiction (R. 39). See *Lassiter* v. *Northampton County Board of Elections*, Number 239 Miscellaneous, —— U.S. —— ; 79 S.Ct. 294; —— L.ed. ——. The jurisdiction of this Court rests upon 28 U.S.C. 1257(2), this being an appeal from the Supreme Court of the State of North Carolina in an action, "where is drawn in question the validity" of state statutory and constitutional enactments "on the ground of * * * being repugnant to the Constitutions, treaties or laws of the United States, the decision" below being in favor of the impleaded state statutory and constitutional enactments.

The action below involved the validity of the North Carolina educational test for prospective voters and applicants for the franchise, which educational test is provided by statute (North Carolina General Statutes 163-28 Amended April 12, 1957), and made mandatory by state constitutional provisions (North Carolina Constitution Article VI, Section 4). For the North Carolina Supreme Court's holding that the North Carolina educational tests for prospective voters is mandatory under the North Carolina Constitution, see *Allison* v. *Sharp*, 209 N.C. 477, 184 S.E. 27, and the opinion below in the instant case. In the

courts and tribunals below, appellant has meticulously and consistently asserted the unconstitutionality of North Carolina General Statute 163-28 et seq. and of the educational test therein provided, when measured by the standards of the 14th, 15th and 17th Amendments to the federal Constitution (R. pp. 2, 3, 4, 10, 11, 12, 13, 14, 15, 16 and 17). The validity of the said state Statutes and of Section 4, Article VI of the Constitution of North Carolina, which is held by the State Supreme Court to authorize and require the statutory, educational test (*Allison* v. *Sharp, supra; Lassiter* v. *Northampton County Board of Elections,* 248 N.C. 102, 102 S.E. 2d 853), as measured by the 14th, 15th and 17th Amendments to the federal Constitution, was expressly upheld and passed upon by the Supreme Court of North Carolina. See the printed record before this Court, pages 19 to 33 for the opinion below. Under this circumstance, little question can arise as to this Court's jurisdiction on appeal. See the jurisdictional question as considered in the following cases: *Harding* v. *Illinois,* 196 U.S. 78, 25 S.Ct. 176, 49 L.ed. 394; *Dahnke-Walker Milling Company* v. *Bondurant,* 257 U.S. 282, 42 S.Ct. 106, 66 L.ed. 239; *Beard* v. *City of Alexandria,* 341 U.S. 622, 71 S.Ct. 920, 95 L.ed. 1233; *Lovell* v. *City of Griffin, Ga.,* 303 U.S. 444, 58 S.Ct. 66, 82 L.ed. 949; *Chicago R. I. & P. R. Co.* v. *Perry,* 259 U.S. 548, 42 S.Ct. 524, 66 L.ed. 1056; *Home Insurance Co.* v. *Dick,* 281 U.S. 397, 50 S.Ct. 338, 74 L.ed. 926; *Nickey* v. *Mississippi,* 292 U.S. 393, 54 S.Ct. 743, 78 L.ed. 1323; *Whitefield* v. *Ohio,* 297 U.S. 431, 56 S.Ct. 532, 80 L.ed. 778; *People of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71, Champaign, Ill.,* 333 U.S. 203, 68 S.Ct. 461, 92 L.ed. 648, 2 A.L.R. 2d 1338; *People of State of New York ex rel. Bryant Zimmerman,* 278 U.S. 63, 49 S.Ct. 61, 73 L.ed. 184.

Prior to the commencement of the instant cause in the Superior Court of Northampton County, North Carolina,

on the 2nd day of July, 1957, as an appeal from the Northampton County Board of Elections (R. p. 6), a Three Judge United States District Court had held Section 4 of Article VI of the North Carolina Constitution to be "void as violative of the provisions of the 14th and 15th Amendments to the Constitution of the United States." *Louise Lassiter* v. *Helen H. Taylor* (E.D. N.C. 1957), 152 F.Supp. 295, 2 Race Rel. Law Rep. 832. The appellant on this appeal was also plaintiff in the federal case as indicated by the entitlement. The United States District Court also stayed further proceeding before it and ordered an exhaustion of administrative remedies in the following language:

> "Before we take any action with respect to the Act of March 27, 1957, however, we think that it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution. Government and Civic Employees Organizing Committee etc. v. S. F. Windsor (decided May 13, 1957, — U.S. ——). We think, also, that administrative remedies provided by the act should be exhausted before action by the federal courts is invoked. We shall accordingly enter an order staying action herein but retaining jurisdiction for a reasonable time to enable plaintiffs to take action in the courts of North Carolina to obtain an interpretation of the statute and to exhaust administrative remedies thereunder." *Lassiter* v. *Helen H. Taylor, supra.*

Pursuant to this explicit mandate, the instant case was commenced as an administrative proceeding before the precinct registrar involved (R. pp. 2, 3, 4, 5 and 6), and all unadjudicated constitutional questions were presented to the state courts for adjudications, even though the same issues were involved in the prior action which the Three Judge United States District Court had stayed. This man-

ner of proceeding is expressly required by this Court's Opinion in *Government and Civic Employees Committee, CIO* v. *Windsor*, 353 U.S. 364, 77 S.Ct. 838, 1 L.ed. (2d) 894 (1957).

While holding the state statute herein involved to be valid and not unconstitutional when measured by the standards of the 14th, 15th and 17th Amendments to the Constitution of the United States, the Supreme Court of North Carolina, in the opinion upon the instant Record, has undertaken to perform the feat of reviving Section 4 of Article VI of the North Carolina Constitution and of predicating the said statutory enactments entirely upon the "revived" constitutional provisions which the Three Judge District Court held to be void "when enacted." See *Louise Lassiter* v. *Helen H. Taylor*, *supra*. In view of the marriage of the statutory enactments, which purport to provide the educational tests, to the "revived" Section 4 of Article VI of the state constitution, which is thought to authorize and require the statutory enactments (*Allison* v. *Sharp*, *supra*; *Lassiter* v. *Northampton County Board of Elections*, *supra*), no question arises as to whether appellant's attack upon the North Carolina educational test for prospective voters and as to whether appellant's attack upon the statutory enactments containing the test is also an attack upon Section 4, Article VI of the Constitution of North Carolina which purports to require the test. See *People of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71*, *supra*; *St. Louis Southwestern Ry. Co.* v. *State of Arkansas*, 217 U.S. 136, 30 S.Ct. 476, 54 L.ed. 698; *Terminello* v. *Chicago*, 337 U.S. 1, 69 S.Ct. 894, 93 L.ed. 1131. And it must be remembered that the North Carolina Supreme Court has invariably held that the North Carolina legislature is without authority to add to the qualifications of electors any other qualification which is not found in the State Constitution, *State* v. *Lattimore*, 120 N.C. 426, 26 S.E. 638

(1897); *State* v. *Scarboro*, 110 N.C. 232, 14 S.E. 737 (1892); *Spruill* v. *Bateman*, 162 N.C. 588, 77 S.E. 768 (1913); *People ex rel. Van Bokkelen* v. *Canaday*, 73 N.C. 198 (1875). See also North Carolina Constitution, Article VI, Section 1. Hence, there could be no educational test in North Carolina for the qualifications of electors without state constitutional authorization and an attack upon the educational qualifications is of necessity an attack upon the state constitutional provisions which purport to require the test. *People of Illinois ex rel. McCollum* v. *Board of Education, etc., supra; St. Louis Southwestern Ry. Co.* v. *State of Arkansas, supra; Terminello* v. *Chicago, supra.*

This analysis is not unmindful of the circumstance that the Supreme Court of North Carolina proceeded to hold valid the constitutional provisions which it "revived." See *North Carolina R. Co.* v. *Zackary*, 232 U.S. 248, 34 S.Ct. 305, 58 L.ed. 591; *Nickey* v. *Mississippi, supra; Home Insurance Co.* v. *Dick, supra,* where this Court held that the opinion of the state court is a part of the record in so far as its adjudication of the jurisdictional question is concerned. Hence, no question arises but that the validity of Section 4, Article VI of the Constitution of North Carolina, when tested by the 15th Amendment to the federal Constitution, is presented for review upon this appeal. Further, since the "revival" of Section 4, Article VI of the North Carolina Constitution was an act done in and by the state Supreme Court after the Three Judge District Court's ruling upon the constitutional provisions (*Louise Lassiter* v. *Helen H. Taylor, supra*), and since the state Supreme Court purported to impart the kiss of constitutional life to its resurrected creature, review by this Court of the validity of the constitutional provisions is available without consideration of meticulous niceties which are frequently involved in raising a federal question (*Saunders* v. *Shaw*, 244 U.S. 317, 37 S.Ct. 638, 61 L.ed. 1163). By force

of the arguments and contentions contained and suggested in the foregoing matter relating to jurisdiction and the Record before this Court, it is respectfully submitted that this Court has jurisdiction of the several questions presented on this appeal, as provided in 28 U.S.C. 1257(2).

State Constitutional and Statutory Provisions Involved

(a) *Section 4, Article VI, Constitution of North Carolina*

Section 4, Article VI, of the Constitution of North Carolina was declared void "when enacted" by a Three Judge United States District Court in June, 1957, *Louise Lassiter* v. *Helen H. Taylor* (E.D. N.C.), 152 F.Supp. 295, 2 Race Rel. Law Rep. 832. No review of this decision has ever been pursued in this Court. On the 9th day of April, 1958, the Supreme Court of North Carolina filed the opinion upon the instant Record which purports to revive the constitutional provisions above mentioned (R. pp. 19-33). See also *Lassiter* v. *Northampton County Board of Elections*, 248 N.C. 102, 102 S.E. 2d 853, 3 Race Rel. Law Rep. 495. The above mentioned constitutional provision is involved in the instant review and reads as follows:

> "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to

vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section two of this article."

(b) *North Carolina General Statutes, Chapter 163, Article 6*

North Carolina General Statutes, Chapter 163, Article 6, as re-written April, 1957, were held constitutional and valid in the opinion of the court below (R. pp. 19-33). See also *Lassiter v. Northampton County Board of Elections, supra.* The constitutionality of the above mentioned statutes is involved in the instant review, and they read as follows:

"Section 163-28. VOTER MUST BE ABLE TO READ AND WRITE; REGISTRAR TO ADMINISTER SECTION.—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section.

"Section 163-28.1. APPEAL FROM DENIAL OF REGISTRATION.—Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 P. M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name age and address of the appealing party, and shall state the reasons for appeal.

"Section 163-28.2. HEARING ON APPEAL BEFORE COUNTY BOARD OF ELECTIONS.—Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elections, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the county board of elections shall be a quorum for the purpose of hearing appeals on the question of registration, and the decision of a majority of the members of the board shall be the decision of the board. All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matters pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board.

"Section 163-28.3. APPEAL FROM COUNTY BOARD OF ELECTIONS TO SUPERIOR COURT.—Any person aggrieved

by a final order of a county board of elections may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of that precinct. The court shall not be authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the superior court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions."

(c) *North Carolina General Statutes, Chapter 163, Article 8*

North Carolina General Statutes, Chapter 163, Article 8, was first enacted in 1901 and is still a part of the statutory law of North Carolina. See *Clark* v. *Statesville*, 139 N.C. 490, 52 S.E. 52 (1905). Article 8 is composed of General Statutes 163-32 through 163-42. The first Section of this Article reads as follows:

"Section 163-32. PERSONS ENTITLED TO PERMANENT REGISTRATION.—Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the sec-

ond day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the State of North Carolina; I am ..... years of age. I was on the first day of January, A.D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ....., in which I then resided (or, I am a lineal descendant of ....., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ..... wherein he then resided)."

Questions Presented

The Court below has held that North Carolina General Statutes 163-28 et seq. and the educational test therein provided are valid and constitutional when tested by the Constitution of North Carolina. This holding is binding upon this Court, *In re Kemmler*, 136 U.S. 436, 10 S.Ct. 930, 34 L.ed. 519. However, the Court below has held that North Carolina General Statutes 163-28 *et seq.* do not offend the 14th, 15th and 17th Amendments to the federal Constitution. This holding presents appealable questions for this Court's jurisdiction, 28 U.S.C. 1257 (2). The Court below, by affirmance of the trial court's judgment and in the express language of its opinion, has held: (1) that the people of

North Carolina had the power in 1945 to authorize and require in their Constitution an educational test for prospective voters while exempting from the said test any male elector "who was, on January 1, 1867, or at any time prior thereto entitled to vote under the laws of any state in the United States wherein he then resided," and any "lineal descendant of any such person * * * provided he shall have registered in accordance with the terms of this section prior to December 1, 1908," and (2) that the federal Constitution affords no protection for the acquisition of the franchise other than an effete protection against racial privation which the State Supreme Court believes is offered by the 15th Amendment to the federal Constitution and which the State Supreme Court thought the people of North Carolina could subtly disregard. In short, the State Supreme Court has held: (1) that Section 4 of Article VI of the Constitution of North Carolina, in spite of its 1902 and 1945 preferential grant of the franchise is in direct conflict with the 15th Amendment to the federal Constitution. (See *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 1340), had the miraculous efficacy in 1945, upon revival, of authorizing and validating a statutory scheme of disenfranchisement, which was within the pale of the 15th Amendment to the federal Constitution (North Carolina General Statutes 163-28 thru 42), and (2) that the Privileges and Immunities, Due Process and Equal Protection Clauses of the 14th Amendment and the 17th Amendment to the federal Constitution contain and provide no standards or requirements which the state is obliged to observe in the fashioning of law relative to the qualifications of voters. In the wake of these holdings the questions presented are as follows:

(a) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI of the Constitution of North Carolina valid and constitutional, when measured by the standards of the Due Process Clause of the 14th

Amendment to the Federal Constitution, in so far as they purport to provide for a so called literacy test based upon the reading and writing of "any section" of the Constitution of North Carolina, as against appellant's contentions that the said test is arbitrary, capricious, subjective and without legal administrative standards?

(b) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI of the Constitution of North Carolina valid and constitutional, when measured by the standards of the Equal Protection Clause of the 14th Amendment to the Federal Constitution, in so far as they purport to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is a discriminatory and arbitrary attempt to bestow the privilege of the franchise only upon the class of citizens who can read and write "any section" of the State Constitution?

(c) Are North Carolina General Statutes *et seq.* and Section 4, Article VI, Constitution of North Carolina valid and constitutional, when measured by the standards of the Privileges and Immunities Clause of the 14th Amendment to the Federal Constitution, in so far as they purport to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is an arbitrary denial of fundamental privileges and immunities of citizens of the United States.

(d) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI, Constitution of North Carolina valid and constitutional; when measured by the standards of the 15th Amendment to the Federal Constitution, in so far as they are based and predicated entirely upon the purported 1945 revival of the 1902 invalid and unconstitutional provisions, to wit, Article VI, Section 4 of the Constitution of North Carolina, which constitutional Provisions purport to provide voting privileges for certain white citizens without exposure or subjection to the so called literacy test to which appellant, as a Negro, must be exposed and subjected?

(e) Are North Carolina General Statutes 163-28 *et seq.* and Section 4, Article VI, Constitution of North Carolina valid and constitutional, when measured by the standards of the 17th Amendment to the Federal Constitution, in so far as they deny to appellant the opportunity to participate in federal elections solely because of the inability to read "any section" of the Constitution of North Carolina, as against appellant's contention that said statute denies to her fundamental rights which are guaranteed by the Federal Constitution?

Statement

The appeal herein is from a final judgment of the Supreme Court of North Carolina (R. pp. 35 and 36). The instant action was heard in the Supreme Court of North Carolina as an appeal from the Superior Court of Northampton County, wherein appellant in said Court was plaintiff (R. pp. 19 and 20). The proceeding in the Superior Court of Northampton County was in turn an appeal from the Northampton County Board of Elections (R. pp. 4 and 6). On

the 22 day of June, 1957, appellant applied to the registrar of the Seaboard Precinct for registration as a voter (R. pp. 2, 7 and 8). This application was made pursuant to North Carolina General Statute 163-28. Relative to appellant's application to the registrar for registration as a voter, the Record in this cause discloses the following Stipulations:

"7. That upon presenting herself to the said registrar, the said Louise Lassiter subscribed to the oath generally and usually required of applicants for registration.

"8. That following the taking of and subscribing to said oath the said registrar, to wit, Mrs. Helen H. Taylor, presented to the said Louise Lassiter a printed copy of the Constitution of the State of North Carolina and requested that she read certain designated sections thereof.

"9. That the said Louise Lassiter declined and refused to read the proffered sections of the said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

"10. That the said registrar, to wit, Mrs. Helen H. Taylor, upon the declining and refusing of the said Louise Lassiter to read the proffered sections of the Constitution of North Carolina, then and there refused to register and did not register the said Louise Lassiter, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for

registration, namely, reading any section of the Constitution of North Carolina in the English language.

"11. That on the same day of refusal of registration to her, upon the ground hereinbefore set forth, to wit, on the 22nd day of June, 1957, and said Louise Lassiter gave written notice to the said registrar of appeal from said denial of registration by said register to the Board of Elections of Northampton County" (R. pp. 7 and 8).

Following the denial of registration by the registrar, appellant appealed in writing (R. pp. 2 and 3), to the Board of Elections of Northampton County, pursuant to the provisions of North Carolina General Statutes (163-28.1 and 163-28.2). Relative to appellant's appeal to the County Board of Elections, the Record in this cause discloses the following Stipulations:

"12. That on the 28th day of June, 1957, the appeal of the said Louise Lassiter from the denial of registration by the aforesaid registrar was heard by and before the Board of Elections of Northampton County, sitting and convened as a body and administrative board, in the Courthouse building of Northampton County, in Jackson, North Carolina.

"13. That the said Board of Elections of Northampton County, being duly constituted and convened, as aforesaid, heard and entertained the aforesaid appeal of the said Louise Lassiter *de novo*.

"14. That in said hearing and as a part of said hearing to determine the eligibility of the said Louise Lassiter to register as a voter, the said Board of Elections requested of the said Louise Lassiter that she read certain designated sections of the Constitution of North Carolina from a printed copy of said Constitution supplied her.

"15. That the said Louise Lassiter declined and refused the said Board's request and requirement that she read the proffered sections of said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and the laws of the State of North Carolina, and the Constitution and laws of the United States.

"16. That the said Board of Elections, upon the said Louise Lassiter's failing and refusing to read the proffered sections of the said Constitution, of any other sections thereof, issued a written order and directed that the said Louise Lassiter be denied registration as a voter in the Seaboard Precinct, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution in the English language" (R. pp. 8 and 9).

Following the denial of registration by the Board of Elections of Northampton County, appellant appealed in writing (R. p. 4), to the Superior Court of Northampton County, pursuant to the provisions of North Carolina General Statute 163-28.3. Relative to appellant's educational abilities and qualifications, as the same appeared to and in the Superior Court of Northampton County, the Record in this cause discloses the following Stipulations:

"19. That the said Louise Lassiter, because of her lack of educational qualifications, on June 22, 1957, and continuously since said date until the present date, is unable to and has failed and refused to write and read.

or attempt to write or read, any section of the Con stitution of North Carolina, or any section of the Con stitution of the United States in the English language

"20. That aside from her failure, refusal and in ability to read or write any section or sections of the Constitution of North Carolina, or any section or sec tions of the Constitution of the United States in the English language, the said Louise Lassiter meets the other statutory qualifications for eligibility to be reg istered as a voter in Seaboard Precinct, Northampton County, North Carolina" (R. pp. 9 and 10).

In the Superior Court of Northampton County, the cause was submitted to the trial Judge upon an agreed state ment of facts, a jury trial being waived by both parties Prior to the entry of judgment, appellant made motion for a Directed Verdict and Finding in her favor, upon the ground that:

"the failure and refusal of the Registrar of the Seaboard Precinct of Northampton County and the failure and refusal of the Board of Elections of Northampton County to enter and cause to be entered her name upon the book of qualified registered voters because of her failure and refusal to read any section of the Con stitution of North Carolina as a prerequisite to being so registered, as required by North Carolina General Statutes, Section 163-28, as amended, is unlawful, as being in violation of Article VI, Section I of the Con stitution of the State of North Carolina, and in viola tion of the 14th, 15th, and 17th Amendments to the Constitution of the United States" (R. pp. 10 and 11).

This motion was denied by the trial Judge (R. p. 11). Prior to this entry of judgment, appellant also made a request

that the trial Judge make the following Conclusions of Law:

"1. That the requirement by the Registrar of Seaboard Precinct and by the Northampton County Board of Elections, in application of the provision of Section 163-28 of General Statutes of North Carolina, as amended, that the said Louise Lassiter be able to read or write any section of the Constitution of North Carolina, as a prerequisite to being registered as a qualified voter is unlawful, the same being in violation of Article VI, Section I of the Constitution of North Carolina, and in violation of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

"2. That the said Louise Lassiter is entitled to be registered as a qualified voter in Seaboard Precinct of Northampton County free of and without regard to any requirement of reading or writing any section of the Constitution of North Carolina as a prerequisite to such registration" (R. p. 12).

This request was denied by the trial Judge (R. p. 12). To the judgment entered by the trial Judge of the Superior Court of Northampton County, which adjudged and decreed that appellant was not entitled to be registered as a voter, appellant objected and excepted, upon the ground that the trial court had sustained the validity of North Carolina General Statute 163-28 and the educational test presumably therein provided, whereas the said test is in conflict with the 14th, 15th, and 17th Amendments to the federal Constitution, as well as being in conflict with certain state constitutional provisions, and appealed to the Supreme Court of North Carolina, assigning these objections and exceptions as error (R. pp. 13, 14, 15, 16 and 17).

The Supreme Court of North Carolina affirmed the Judgment of the Superior Court, upon the ground that the edu-

cational test provided in North Carolina General Statute 163-28, amended, was not in conflict with the Constitution of North Carolina and upon the ground that said statute was not in conflict with the 14th, 15th and 17th Amendments to the Constitution of the United States (R. pp. 19 to 33). See also *Lassiter* v. *Board of Elections*, 248 N.C. 102; 102 S.E. 2d 853. Relative to appellant's Assignments of Error based upon the 14th, 15th and 17th Amendments to the Constitution of the United States, the State Supreme Court held as follows:

> "And the provisions of General Statute 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of or against any by reason of race, creed or color. Hence there is no conflict with either the 14th, 15th or 17th Amendments to the Constitution of the United States," *Lassiter* v. *Board of Elections, supra* (R. p. 33).

Relative to Appellant's contention and Assignment of Error that North Carolina General Statutes 163-28 et seq. violate the State Constitution, the Supreme Court of North Carolina held as follows:

> "So, irrespective of the questions now raised, as to the validity of the provisions of the 1902 Amendment, and as to the effect thereof upon the provisions of Article VI of the Constitution of 1868 as amended by the Constitutional Convention of 1875, when the General Assembly came to consider the proposed amendment of 1945, Article VI then factually appeared intact and unchallenged. Therefore the provisions of the 1945 amendment must be considered in the light of this fact. Thus, when, as to who may vote, the General Assembly declared that 'Every person born in the United States and every person who has been natu-

ralized, twenty-one years of age, and possessing the qualifications set out in this article shall be entitled to vote * * * ,' the clause 'possessing the qualifications set out in this article,' was intended to mean, and was made certain by, the qualifications appearing upon the face of the Article VI, so unchallenged. And one of those qualifications was set forth in Section 4 of Article VI wherein it was required that 'Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.'

" * * * In this light, the 1945 amendment so proposed and later adopted had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI. freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act," *Lassiter* v. *Board of Elections, supra* (R. p. 33).

The opinion of the State Supreme Court was entered on the 9th of April, 1958, and Judgment of the Court followed on the 21st day of April, 1958.

On the 2nd day of July, 1958, and within the time and manner provided by 28 U.S.C. 1257(2) and Rule 10 of the Revised Rules of this Court, appellant filed Notice of Appeal in the office of the Clerk of the Supreme Court of North Carolina to this Court, setting out the particular constitutional questions (R. pp. 35-38). After the service and filing of Appellant's Statement as to Jurisdiction, to which Defendant filed motion to dismiss, this court noted probable jurisdiction on the 15th of December, 1958 (R. p. 39).

ARGUMENT

I.

The Court Below Erred by Holding That the 1945 Amendment to Section 4, Article VI of the Constitution of North Carolina "Revived" the Said Constitutional Provision and That This "Revival" Has the Legal Force of Supporting the North Carolina Educational Test for Prospective Voters and of Supporting North Carolina General Statute 163-28 et seq. Which Contain and Provide the Educational Test.

The North Carolina constitutional provision upon which the Supreme Court of North Carolina hangs the statutory provisions involved in this litigation and the educational test for prospective voters were examined by a Three Judge United States District Court in 1957, *Louise Lassiter* v. *Helen H. Taylor*, 152 F.Supp. 295; 2 Race Rel. L. Rep. 832 (E.D. N.C. 1957). That Court held the constitutional provisions to be, "when enacted, void as violative of the provision of the 14th and 15th Amendments to the Constitution of the United States." No review by this Court has ever been sought in that action, and appellant herein was a party plaintiff before the United States District Court. It should be observed that Section 4, Article VI of the Constitution of North Carolina contains a "grandfather clause" embroidered upon its face such as was involved in *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 1340 and in *Myers* v. *Anderson*, 238 U.S. 368, 35 S.Ct. 932, 59 L.ed. 1349. Though the provision purported to limit the registration period for "grandfather electors" to the period between the effective date of the enactment on January 25, 1901, and December 1, 1908, the measure also purports to extend the assurance of *permanent registration* to the

"grandfather electors." See North Carolina General Statute 163-32 et seq., which are the statutory implementations of the constitutional mandate for permanent registration of "grandfather electors." See also *Clark* v. *Statesville*, 139 N.C. 490, 52 S.E. 52, where the provisions are construed and interpreted by the Supreme Court of North Carolina. In view of the undisguised purpose of the constitutional provisions of placing a heavier burden upon the members of appellant's race, to wit, the Negro race, when they would seek the franchise, and of giving a substantial number of members of the white race a permanent preferential guaranty of the rights and privileges of the ballot, no question can arise as to the soundness of the Three Judge District Court's opinion in *Louise Lassiter* v. *Helen H. Taylor*, *supra*. See also *Lane* v. *Wilson*, 307 U.S. 268, 59 S.Ct. 872, 83 L.ed. 1281.

Nevertheless, the Supreme Court of North Carolina holds that when the people of North Carolina, by way of passing upon an amendment in 1945, substituted the word "person" for the word "male" in Section 1, Article VI of the state Constitution, in order to make the North Carolina suffrage provisions consonant with the 19th Amendment to the federal Constitution, they thereby enacted into law the Constitutional provisions which the 15th Amendment had barred in 1902, the date assigned as the effective date of the enactment. The North Carolina Supreme Court insists:

> "So, irrespective of the questions now raised, as to the validity of the provisions of the 1902 amendment, and as to the effect thereof upon the provisions of Article VI of the Constitution of 1868 as amended by the Constitutional Convention of 1875, when the General Assembly came to consider the proposed amendment of 1945, Article VI then factually appeared intact and unchallenged. Therefore the provisions of the 1945 amendment must be considered in the light of this

fact. Thus, when, as to who may vote, the Genera Assembly declared that 'Every person born in th United States, and every person who has been natura ized, 21 years of age, and possessing the qualification set out in this article shall be entitled to vote * * * the clause 'possessing the qualifications set out in thi article,' was intended to mean, and was made certai by (fol. 33), the qualifications appearing upon the fac of the Article VI, so unchallenged. And one of thos qualifications was set forth in Section 4 of Article V wherein it was required that 'Every person presentin himself for registration shall be able to read and writ any section of the Constitution in the English lan guage. * * * ' In this light, the 1945 amendment so pro posed and later adopted had the effect of incorporatin and adopting anew the provisions as to the qualifica tions required of a voter as set out in Article VI, free of the indivisibility clause of the 1902 amendment. An the way was made clear for the General Assembly t act" (R. pp. 31 and 32).

Obviously, the state court is of the erroneous impressi that the North Carolina electors in 1945, by way of revival could perpetuate, vouchsafe and confirm the very racia inequalities in the qualifications for and exercise of th franchise which the 15th Amendment to the federal Con stitution had barred and interdicted in 1902, when the elec tors initially sought to create and provide the racia inequalities relating to the franchise. In view of this Court holding in *Lane* v. *Wilson, supra,* it is impossible to sustai the proposition that the people of North Carolina can b such indirection or subtlety, render ineffective the prohib tions of the 15th and 14th Amendments to the federa constitution. Again, the North Carolina Supreme Court decision and action in holding that the people of Nort Carolina had revived Section 4 of Article VI, of the stat

Constitution with all of its racially offensive provisos, is in and of itself within the prohibitions of the 15th and 14th Amendments, *American Federation of Labor* v. *Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.ed. 855; *Barrows* v. *Jackson*, 346 U.S. 249, 73 S.Ct. 1031, 97 L.ed. 1586. Again, the language of the State Supreme Court's opinion seems to assume that the 15th and 14th Amendments are concerned only with the creation of racial parity between appellant and white persons who *now apply* for registration for the franchise as distinguished from racial parity between appellant and white persons who *now enjoy* and exercise the franchise without having ever been subjected to the educational test provided in North Carolina General Statute 163-28 before its revision in 1957 or since. Indeed, the State Supreme Court has stated its views in the following language:

> "And the provisions of General Statute 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of, or against any by reason of race, creed or color. Hence there is no conflict with either the 14th, 15th or 17th Amendments to the Constitution of the United States". (R. p. 33).

But the 15th and 14th Amendments have not been so circumscribed in their reach of racial discrimination as the court below has presumed. Included within the reach of these federal Constitutional provisions is racial discrimination in every facet of the exercise of the franchise, such as registration as a voter (*Lane* v. *Wilson, supra*), or voting in primary elections for federal office holders (*United States* v. *Classic*, 313 U.S. 299, 61 S.Ct. 1031, 85 L.ed. 1368; *Smith* v. *Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.ed. 987), or voting in pre-primary elections for federal office holders (*Adams* v. *Terry*, 345 U.S. 461, 73 S.Ct. 809, 97 L.ed. 1152),

or voting in general elections for federal office holders (*Ex parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.ed. 274; *United States* v. *Mosley*, 238 U.S. 383, 35 S.Ct. 904, 59 L.ed. 1355).

Finally, it cannot be said that the North Carolina scheme of exemptions from the educational test bestowed no benefit upon the class of applicants selected for preferential treatment. The United States Census Report for North Carolina reveals a potential white male voting population of 760,404 in 1940 (6th Census, United States, Characteristics of the Population of North Carolina). Of this number, more than 134,692 were over 53 years of age and presumably might have been eligible for registration under the "Grandfather Clause." Report reveals that in 1930 the total potential white, male voting population was 549,845. Of this number, more than 200,101 were over 43 years of age and presumably old enough to have sought registration under the "Grandfather Clause." The United States Census Report for North Carolina reveals a potential white, male voting population of 865,837 in 1950 (1950 United States Census of Population for North Carolina). Of this number, more than 81,696 were over 63 years of age and presumably might have been eligible for registration under the North Carolina "Grandfather Clause."

The State Supreme Court was careful in its Opinion to cite and approve its own 1936 opinion in *Allison* v. *Sharp*, *supra*, where the right of registration since 1908 is equated between the races, without notice of the fact that no such equality existed in 1945 or exists today, as between races in the ultimate exercise of the franchise because of the permanent registration of "grandfather elector" (North Carolina General Statute 163-32 et seq.), which is required by the constitution of North Carolina and by the North Carolina statutes, *Clark* v. *Statesville*, *supra*. It is clear

that the number of persons in 1945, who could have qualified for the franchise between 1902 and 1908 without subjection to the educational test, was a substantial number and that the discriminatory aspect of the provision was a living reality. And it can not be forgotten that North Carolina has applied this same educational test with its "grandfather exemptions" since the enactment of the constitutional provisions in 1902. See *Clark* v. *Statesville, supra; Allison* v. *Sharp, supra* (R. p. 29).

II.

The Court Below Erred by Holding That North Carolina General Statute 163-28 et seq. and the Educational Test Therein Provided for Prospective Voters, Is Constitutional When Measured by the 14th and 17th Amendments to the United States Constitution.

The Supreme Court of North Carolina has decided this case as though the sole federal, constitutional prohibition against state curtailment of the exercise of the franchise is upon racial or religious grounds. Indeed the court below states:

> "And the provisions of General Statute section 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of or against any by reason of race, creed or color. Hence there is no conflict with either the 14th, 15th and 17th Amendments to the Constitution of the United States" (R. p. 33).

Nevertheless, appellant raised and preserved questions under the 14th and 17th Amendments to the United States Constitution relating to the appellant's contentions that: (1) the North Carolina Statutes provide an arbitrary,

capricious and subjective test without providing any legal administrative standards; (2) the North Carolina Statutes provide for unreasonable discrimination between persons who can read and write *any section* of the state Constitution and those who can not; (3) the North Carolina Statutes allow and provide an arbitrary and unreasonable denial of fundamental privileges and immunities of citizens of the United States, in so far as they withhold the franchise from unsuccessful applicants in the matter of elections of candidate for national office (R. pp. 10, 11, 13, 14, 15, 16, 17, 35, 36, 37 and 38). Appellant respectfully submits that the question as to whether North Carolina General Statutes 163-28 et seq. is constitutional, when measured by the standards of the Due Process, Equal Protection and Privileges and Immunities Clauses of the 14th Amendment and by the standards of the 17th Amendment to the federal Constitution presents substantial, federal questions which have not been foreclosed by decisions of this Court. It is observed that the question relative to a particular educational test has never been squarely before this Court for decision. Compare *Guinn* v. *United States,* 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 1340; *Williams* v. *Mississippi,* 170 U.S. 213, 18 S.Ct. 583, 42 L.ed. 1012. While the question was presented in the appeal in *Schnell et al.* v. *Davis et al.* (3 Judge D.C. Ala.), 81 F.Supp. 872, this Court's affirmance of the Three Judge District Court's opinion and decision was apparently based upon 15th Amendment consideration, in that this Court cited *Guinn* v. *United States, supra,* in support of its decision. See *Schnell et al.* v. *Davis et al.,* 336 U.S. 933, 69 S.Ct. 749, 93 L.ed. 1093. It should also be observed that all pronouncements by this Court relative to the validity of educational tests as a qualification for voters have been in an abstract and detached manner, rather than in reference to any particular case. Compare the *Guinn* and *Williams* cases, *supra.* Moreover, in the *Williams* case, *supra*

it is obvious that this Court was preoccupied primarily with consideration of a criminal jury system rather than with consideration attendant upon an applicant's right to vote or qualify for the franchise.

Language in several of the older opinions of this Court might tend to indicate that the several states are free to condition the exercise of the franchise upon whatever qualifications or conditions which the states may desire or impose, and that except for racial or religious prohibitions, as found in the 15th and 14th Amendments to the federal Constitution, the federal Constitution and its 14th and 17th Amendments in particular, provide no protection or guaranty to the applicant for the franchise, even where the franchise for national elections is involved. (See *Pope* v. *Williams* (1904), 193 U.S. 621, 24 S.Ct. 573, 48 L.ed. 817; *Minor* v. *Happersett* (1874), 88 U.S. 162, 21 Wall. 162, 22 L.ed. 627.)

It is too late now to contend that the 17th Amendment to and Section 2 of Article I of the Constitution of the United States have placed the franchise, as it pertains to national elections, absolutely in the hands of the several states and beyond the control of the federal Constitution, *United States* v. *Classic*, 1941, 313 U.S. 299, 61 S.Ct. 1031, 85 L.ed. 1368; *United States* v. *Aczel*, 219 F. 917; *Smith* v. *Allwright*, *supra*. It is also too late to maintain that exercise of the franchise is not an attribute adhering in national citizenship, *United States* v. *Classic*, *supra*. This observation is confirmed by the recent passage in Congress of the 1957 Civil Rights Act and its context, which is now codified as Title 42, United States Code, Sections 1971 and 1975.

There can be no doubt as to the fundamental nature of the franchise in North Carolina and of registration for its exercise. North Carolina General Statute 9-1 permits the several counties to resort to voting registration lists for

prospective jurors. See *State* v. *Ingram*, 237 N.C. 197, 7
S.E. 2d 532. All elections in North Carolina are held pur
suant to the registration laws under which the educationa
test is prescribed. See Chapter 163, North Carolina Gen
eral Statutes. Registered voters are called upon to indicat
their choice in matters dealing with county and municipa
finances and bond issues and which affect their individua
property and tax liabilities, North Carolina General Stat
utes 153-91 *et seq.* and 160-388 *et seq.* Also, in the importan
field of education, registered voters are *purportedly* au
thorized to determine the important matter as to when
public school should be closed rather than to abide by con
stitutional mandates pertaining to non-segregation of pub
lic school students because of race. See the Pearsall Plan
North Carolina General Statute 115-265 *et seq.* Registra
tion as a voter in North Carolina is the sole criterion fo
eligibility for elective office, Section 7, Article VI, Con
stitution of North Carolina. See *Spruil* v. *Bateman*, 16
North Carolina 588, 77 S.E. 768. Without further seekin
to exhaust the many privileges adjunct to the franchise i
North Carolina, it is obvious that obtaining and exercisin
the franchise in North Carolina is more than a mer
privilege and that the deprivation of the franchise is
substantial diminution of the privileges and immunitie
of citizenship as delineated in the 14th Amendment to th
federal Constitution. It is further submitted that Congres
had the power in 1957, under the 14th and 17th Amendment
to the federal Constitution, to confirm and secure to th
citizens of the several states their rights to the franchis
without undue and unreasonable harassment. Compar
42 U.S.C. 197(b).

North Carolina is among four states which require th
reading and writing of a constitutional document as
prerequisite for registration as a voter. Her compatriot
are Georgia (Ga. Code Ann. Secs. 34-117 *et seq.*); Missis

sippi (Miss. Const. 1890, Sec. 240-253); South Carolina (S.C. Code, Sec. 23-62). But South Carolina permits registration of electors who own and have paid all taxes collectible during the previous year on property in the state which is assessed at three hundred dollars or more, without submission to the "so called literacy test." And Georgia allows registration upon proof of good character and an understanding of the duties of citizenship in a republican form of government as an alternative to the educational requirement. Although eighteen of forty-nine states require reading, with variance as to subject matter only, only the states mentioned above, along with *Alabama* (Title 17 Sec. 32, Ala. code), require the writing of a constitutional document. A survey also reveals that five of the eighteen states which require some type of reading, merely require that the applicant be able to write his name. They are *Connecticut* (Conn. Gen. Stat., Title 9, Sec. 12); *California* (Cal. Code, Elections Sec. 220); *Delaware* (Del. Code Ann., Title 15, Sec. 1701); *Maine* (Revised Statutes of Maine, Ch. 3, Sec. 2 and 20); *Massachusetts* (Ann. Laws of Mass. C. 51 Sec. 1). Thus, it is seen that except for Mississippi, there is "no precedent" for the North Carolina type of educational test. And it must be remembered that North Carolina does not even exempt the physically infirm from the necessity of qualifying upon her educational test. See *Voting Rights*: 3 Race Rel. Law Rep., pages 371 to 393.

The requirements that a prospective voter be able to *read and write any section* of the State Constitution approaches an absolute mark in arbitrariness and subjectivity. Compare *Yick Wo* v. *Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 34 L.ed. 220; *Connally* v. *General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.ed. 322. This arbitrariness and subjectivity are made absolute by the various, onerous and meaningless hearings which the applicant is given, without benefit of administrative standards, and by the final ad-

ministrative hearing in the State Superior Court at the hands of a lay jury, which must concur unanimously and in jury chambers with the applicant before he is admitted to the enjoyment of the franchise. The 14th and 17th Amendments will not allow such "horseplay" with an applicant's right to the franchise irrespective of the fact that a state may prescribe reasonable requirement for voters. Compare *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 77 S.Ct. 752, 1 L.ed. 2d 796; *Konigsberg* v. *State Bar of California,* 353 U.S. 252, 77 S.Ct. 722, 1 L.ed. 2d 810.

It is respectfully submitted that if the North Carolina educational test is measured by the standards of the 14th and 17th Amendments, without differential treatment, but in full contemplation of the fundamental relationship of the franchise to citizenship, then North Carolina General Statute 163-28 *et seq.* and the educational test therein contained will be found unconstitutional as violative of the 14th and 17th Amendments to the United States Constitution.

Conclusion

For the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of North Carolina should be reversed; that this Court should hold the North Carolina educational test to be invalid and unconstitutional by reason of the matter involved in this appeal and that the Supreme Court of North Carolina be directed to allow appellant to be registered as a voter without being subjected to the educational test ostensibly provided by North Carolina General Statute 163-28 *et seq.*

Respectfully submitted,

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Supreme Court of The United States

October Term, 1958

No. 584

LOUISE LASSITER,
Appellant,
vs.
NORTHAMPTON COUNTY BOARD OF ELECTIONS
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

BRIEF OF THE ATTORNEY GENERAL OF NORTH CAROLINA AMICUS CURIAE

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INTEREST OF THE STATE OF NORTH CAROLINA

The State of North Carolina, through its Attorney General, files this Brief as amicus curiae under the provisions of Paragraphs 4 and 5, Rule 42 of the Revised Rules of the Supreme Court of the United States. Previously the Attorney General filed a Motion to Dismiss in this case (October Term, 1958—No. 229, Misc.) and since that time the Northampton County Board of Elections, desiring to present its argument through its own Counsel, the Attorney General desires to present this Brief as expressing the views of the State of North Carolina.

The issue in this case involves a State-wide question as to the validity and constitutionality of that portion of Article VI, Sec. 4 of the Constitution of North Carolina, which requires every person presenting himself for registration to be able to read and write any section of the Constitution in the English language (see Appendix B herein) and the validity

and constitutionality of Sec. 163-28 of the General Statutes of North Carolina, which enacts the same requirements as to reading and writing any section of the Constitution of the State (see footnote No. 1 to Opinion of 3-Judge Federal Court Appendix A herein, and see Appellant's Brief, p. 8, for section of statute in question). This requirement of the bare minimum in educational qualifications as a prerequisite to voting according to the Opinion of the 3-Judge Federal Court in this case, is in force in 19 states of the Union, only seven of which are Southern states (LASSITER v. TAYLOR, 152 F. Supp. 295—see also Appendix A herein).

The Attorney General of North Carolina as the chief law officer of the State desires to express his views since there is at stake a vital constitutional statutory policy that has been in effect for many years. Furthermore, this is an open and bald attempt to make eligible for voting and for political purposes a mass of illiterate and uneducated persons who will be docile and tractable, who will not understand the issues involved in any election but who will vote at the dictates of their leaders. This statement would be true as to both white and colored voters since the Suffrage requirements as to reading and writing any section of the Constitution in the English language apply equally to both white and colored prospective voters.

OPINION BELOW

The Opinion of the Supreme Court of North Carolina from which this appeal was filed is reported as: 248 N. C. 102, 102 S. E. 2d 853. The Opinion also appears in the Transcript of Record before this Court on pp. 19-33. The Opinion of the Supreme Court of North Carolina was filed on the 9th day of April, 1958, and the decree of the Supreme Court of North Carolina affirming the Judgment of the Superior Court of Northampton County was entered on the 21st day of April 1958 (see Transcript of Record, p. 34). This Court noted probable jurisdiction (R. 39) on December 12, 1958, (see LASSITER v. NORTHAMPTON COUNTY BOARD OF ELECTIONS, No. 239 Misc., 79 S. Ct. 294).

JURISDICTION

The Attorney General of North Carolina contends that this Court does not have jurisdiction for the reason that the 3-Judge District Court of the United States expressly retained jurisdiction of the cause; that the Supreme Court of North Carolina did not decide any federal constitutional issue in this case; that if this Court holds a federal constitutional issue was decided, then the decision of the State Court rests upon a nonfederal basis which independently and adequately supports the State Court Judgment, and, furthermore, in view of the previous decisions of this Court a substantial federal question is not raised in this case. These positions will be set forth in more detail in the Argument appearing in this Brief.

QUESTIONS PRESENTED

I In view of the Opinion of the 3-Judge Federal Court in this case and considering the Record and the Opinion of the Supreme Court of North Carolina, does this Court have jurisdiction to hear and dispose of this case?

II Putting to one side the question of jurisdiction: are the various states of the Nation precluded by the 14th, 15th and 17th Amendments to the Constitution of the United States from requiring a literacy test, such as reading and writing any section of the Constitution of the State in the English language, as a condition precedent to registration and voting?

STATEMENT OF THE CASE

This cause was originally instituted in the District Court of the United States for the Eastern District of North Carolina, Raleigh Division. The Plaintiff sought to have the Federal Court declare unconstitutional the literacy test for voters required by Article VI, Sec. 4 of the Constitution of North Carolina, and Sec. 163-28 of the General Statutes, as that section appeared at the time of the institution of the action. The Plaintiff sought an injunction restraining the Registrar from denying registration to the Plaintiff on the ground of

failure to comply with the literacy test. Before this case was heard in the 3-Judge Federal Court Sec. 163-28 of the General Statutes was revised and omitted the so-called "Grandfather" Clause and also repealed the requirement that the reading and writing of any section of the Constitution had to be to the "satisfaction of the registrar". After the statute was revised the Plaintiff attacked the revised statute in a reply that was filed in the action pending before the 3-Judge Federal Court.

The 3-Judge Federal Court heard the case, evidence was introduced and the parties stated their contentions and arguments and were allowed time to file briefs. Subsequently the 3-Judge Federal Court entered an Order or Opinion, retaining jurisdiction and staying the action until the Plaintiff could exhaust her administrative remedy in the State Court and secure an interpretation of the statute by the Supreme Court of North Carolina in the light of the provisions of the State Constitution (LASSITER v. TAYLOR, 152 F. Supp. 295—decided June 10, 1957).

The Plaintiff again applied to the Registrar for registration as a voter on the 22nd of June, 1957, and refused to take the literacy test required by the statute. Upon being denied registration the Plaintiff appealed to the Board of Elections of Northampton County, and upon this Board upholding the Registrar the Plaintiff appealed to the Superior Court of Northampton County, which Court held the Plaintiff was not entitled to register. The Plaintiff then appealed to the Supreme Court of North Carolina, which entered the Opinion and Mandate which is the subject of this appeal to this Court (see R. 2, et seq.).

In the Superior Court of Northampton County, which is a State Court of general jurisdiction, the case was heard upon Stipulations of Counsel as to the facts of the case, which begin on R. 6 and continue through R. 10. The Opinion of the Supreme Court of North Carolina gives the history of Article VI of the Constitution of North Carolina relating to the Suffrage provisions of the State, and this history begins at the

bottom of R. 25 and extends through R. 30. It is believed that this history of the various provisions of the Suffrage Article of the North Carolina Constitution and its subsequent amendments is correct.

SUMMARY OF ARGUMENT

The Brief of the Attorney General of North Carolina contends that this Court does not have jurisdiction of this cause for the reason that the 3-Judge Federal Court expressly retained jurisdiction of the case, saying, (LASSITER v. TAYLOR, 152 F. Supp. 295):

> "Before we take any action with respect to the Act of March 27, 1957, however, we think it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution. *Government and Civic Employees Organizing Committee, etc.* v. *S. F. Windsor*, 77 S. Ct. 838. We think, also, that administrative remedies provided by the act should be exhausted before action by the federal courts is invoked. *We shall accordingly enter an order staying action herein to retain jurisdiction for a reasonable time to enable plaintiffs to take action in the Courts of North Carolina to obtain an interpretation of the statute and to exhaust administrative remedies thereunder.*
>
> "Action stayed." (Emphasis ours)

The position or status of the case having been developed before a 3-Judge Federal Court and the evidence in the case having been introduced and arguments made to the Court, this case should, therefore, be determined by the 3-Judge Federal Court and the jurisdiction of that Court should not be ousted because the Appellant apparently does not like the result as intimated in the 3-Judge Federal Court's Opinion and seeks to escape the results of the Federal record by raising Federal constitutional questions in the State Court. In raising Federal constitutional questions in the State Court, the Appellant herein violated the Order of the Federal Court which directed the Appellant herein to exhaust administrative remedies in the State Court and to obtain a construction

of Article 6 of Chapter 163 of the General Statutes, beginn with G. S. 163-28, in the light of the provisions of the S Constitution. If the Appellant can thus disregard the m date of the 3-Judge Federal Court, then the doctrine Equitable Abstention, as developed by this Court and various Circuit Courts of Appeal over the last 25 ye amounts to nothing.

The Attorney General further contends that the Opin of the Supreme Court of North Carolina (R. 19) shows t the whole decision is predicated upon a question of a c struction of the State Constitution and State Statute (question stated by the Chief Justice at bottom of R. 2 The statement at the end of the Opinion: "Hence there is conflict with either the 14th, 15th or 17th Amendments the Constitution of the United States", is simply a collate statement which had nothing to do with the precise quest stated by the Court. This Court has said that in litigat the atmosphere in which an opinion is written and the necessarily broad statements that are made imposes u this Court the duty to look beyond the broad sweep of language and determine precisely for itself the ground u which the judgment rests (BLACK v. CUTTER LABO TORIES, 351 U. S. 292, 100 L. ed. 1188, 76 S. Ct. 824). this respect the Attorney General contends that the Opini or Decision, of the State Supreme Court rests upon a n federal ground which fairly, independently and adequat supports the State Court Judgment.

Finally, as to the question of jurisdiction, if this Co decides that the federal question was properly raised a passed upon by the State Court, then in view of the decisi of this Court the question is not substantial. The Attor General concedes that the "Grandfather" Clause in the S Constitution is invalid and unconstitutional, and therefo concedes that any State statute in which there is incorpora the features of the "Grandfather" Clause is also invalid a unconstitutional. The only question left, therefore, is validity of the literacy test, and this Court has said that s a test is valid (GUINN v. UNITED STATES, 238 U. S. 3

360, 35 S. Ct. 932, 59 L. ed. 1340; WILLIAMS v. MISSISSIPPI, 170 U. S. 213, 18 S. Ct. 583, 42 L. ed. 1012; DAVIS v. SCHNELL, D. C., 81 F. Supp. 872, affirmed 336 U. S. 933, 69 S. Ct. 749, 93 L. ed. 1093; TRUDEAU v. BARNES, C.C.A. 5, 65 F. 2d 563, cert. den. 290 U. S. 659, 54 S. Ct. 74 78 L. ed. 571).

Aside from the jurisdiction and as to the merits of the case, the Attorney General contends that a State statute requiring a bare literacy test to the effect that the applicant for registration is only required to read and write a provision of the State Constitution in the English language does not violate the Due Process and Equal Protection Clauses of the 14th Amendment. The scope of the 14th Amendment deals with other situations, and these clauses are not limited to citizens of the United States but extend to any person, including aliens. If the 14th Amendment regulated State suffrage, then it would not have been necessary for the Nation to adopt the 15th Amendment. This Court has expressly held that the Privileges and Immunities Clause of the 14th Amendment did not confer on anyone the right to vote and did not make suffrage co-extensive with State citizenship (MINOR v. HAPPERSTETT, 88 U. S. 162, 171, 22 L. ed. 627—decided six years after the 14th Amendment was ratified).

The North Carolina literacy test does not violate the 15th Amendment because this Amendment simply removed color as a disqualification to vote, and in this case it is stipulated by counsel that the Appellant is eligible to vote and meets all statutory qualifications except for the fact of her failure, refusal and inability to read any section of the Constitution of North Carolina (see Stipulation No. 20, R. 9).

The Constitution and Statute of North Carolina requiring a literacy test does not violate the 17th Amendment which recognizes that the right to vote for senators of the United States is to be determined by the laws of the respective states, and there is nothing in the Amendment that forbids a state from limiting the right of Suffrage to those who can read and write the English language.

ARGUMENT

I

A

THE 3-JUDGE FEDERAL DISTRICT COURT RETAINED JURISDICTION IN THIS CAUSE, AND, THEREFORE, THIS COURT DOES NOT HAVE JURISDICTION.

As heretofore recited, the Appellant brought her action in the District Court of the United States, all the evidence was introduced and the case briefed and argued. The 3-Judge Federal Court stayed action and retained jurisdiction so that the Plaintiff could exhaust the State administrative remedy and could obtain an interpretation as to the validity of the State Statute in the light of the Suffrage provisions of the North Carolina Constitution (LASSITER v. TAYLOR, 152 F. Supp. 295; see Appendix A herein). If the doctrine of Equitable Abstention as developed by this Court and lower federal courts in the last 25 years (CHICAGO v. FIELD-CREST DAIRIES, 316 U. S. 168; 86 L. ed. 1355; SPECTOR MOTOR SERVICE v. McLAUGHLIN, 323 U. S. 101, 89 L. ed. 101; AMERICAN FEDERATION OF LABOR v. WATSON, 327 U. S. 582, 90 L. ed. 873; ALBERTSON v. MILLARD, 345 U. S. 242; 97 L. ed. 983; RESCUE ARMY v. MUNICIPAL COURT, 331 U. S. 549, 91 L. ed. 1666; RAILROAD COMMISSION OF TEXAS v. PULLMAN CO., 312 U. S. 496, 85 L. ed. 971; GOVERNMENT & C.E.O.C., CIO v. WINDSOR, 353 U. S. 364, 1 L. ed. 894; EAST COAST LUMBER TERMINAL v. TOWN OF BABYLON, 174 F. 2d 106; BRYAN v. AUSTIN, 148 F. Supp. 563; LASSITER v. TAYLOR, 152 F. Supp. 295) means anything at all and if this Court intends for the district courts to have State questions litigated and then finish the case in the Federal Court, then the procedure in this case cannot be approved by this Court.

The language of the 3-Judge Federal Court in LASSITER v. TAYLOR, supra, shows that the District Court intended

that the case be resumed after the interpretation of the State questions by the Supreme Court of North Carolina. The 3-Judge Federal Court said:

> *"Before we take any action with respect to the act of March 27, 1957,* however, we think it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution." (Emphasis ours)

The opinions and orders of the various federal courts which have followed the doctrine of Equitable Abstention show that it was intended for the case to be finally disposed of by the Federal Court which stayed proceedings until the State Court could pass upon State questions and that it was contemplated that the action would be finaliy disposed of in the Federal Court.

IN GOVERNMENT AND CIVIC EMPLOYEES ORGAN. COM. v. WINDSOR, 116 F. Supp. 354, which was an action for declaratory judgment and an injunction, a 3-Judge Federal Court retained jurisdiction until the State statute could be construed in the light of the Florida Constitution. As to retaining jurisdiction and the further proceedings to be had, after construction in the State Court, the Federal Court said:

> "This action falls within the sweep of the Watson and other cases last referred to and is one in which the court should withhold the exercise of jurisdiction. However, in line with the procedure approved in several of the cited cases, the cause will not be dismissed, but will be retained and remain pending for a reasonable time to permit the exhaustion of such State Administrative and Judicial remedies as may be available; and thereafter such further proceedings will be had as may then appear to be lawful and proper."

This Court approved this procedure, as shown in GOVERNMENT AND C.E.O.C., CIO v. WINDSOR, 353 U. S. 364, 1 L. ed. 2d 894.

IN EAST COAST LUMBER TERMINAL v. TOWN OF BABYLON, 174 F. 2d 106, the Court of Appeals for the Sec-

ond Circuit, in approving the action of the District Court, said:

> "We think that Galston, J., did not intend to hold that he had no jurisdiction—in spite of some of his language—for otherwise he would not have retained the complaint for future action, but would have dismissed it. We read what he said to mean that, although in this case he had jurisdiction, stricti juris, to dispose of all the questions involved, he should, as matter of discretion, remit state issues to state courts for their decision, and suspend his decision as to any federal issues until they acted. With this we agree."

In the case of BRYAN v. AUSTIN, 148 F. Supp. 563, a 3-Judge District Court in applying the doctrine of equitable abstention, said:

> "The case should not be dismissed but should be retained and remain pending to permit the plaintiffs a reasonable time for the exhaustion of state administrative and judicial remedies as may be available; but thereafter such further proceedings, if any, will be had by this court as may then appear to be lawful and proper."

We now quote some of the orders, or mandates, that have been given by this Court as applicable to such situations.

In RAILROAD COMMISSION OF TEXAS v. PULLMAN CO., 312 U. S. 496, 85 L. ed. 971, on remanding the case, this Court said:

> "We therefore remand the cause to the district court with directions to retain the bill pending a determination of proceedings, to be brought with reasonable promptness, in the state court in conformity with this opinion."

In SPECTOR MOTOR SERVICE v. McLAUGHLIN, 323 U. S. 101, 89 L. ed. 101, this Court said:

> "Avoidance of such guesswork, by holding the litigation in the federal courts until definite determinations on local law are made by the state courts, merely heeds this time-honored canon of constitutional adjudication. * * *

> "We therefore vacate the judgment of the Circuit Court of Appeals and remand the cause to the District Court with directions to retain the bill pending the determination of proceedings to be brought with reasonable promptitude in the State court in conformity with this opinion."

In CHICAGO v. FIELDCREST DAIRIES, 316 U. S. 168, 86 L. ed. 1355, the mandate of this Court was as follows:

> "We therefore vacate the judgment and remand the cause to the District Court with directions to retain the bill pending a determination of proceedings in the state court in conformity with this opinion.
>
> "It is so ordered."

See also the mandate of this Court in AMERICAN FEDERATION OF LABOR v. WATSON, 327 U. S. 582, 90 L. ed. 873, and in GLENN v. FIELD PACKING CO., 290 U. S. 177, 78 L. ed. 252.

We can well see why the Appellant wishes to now avoid the 3-Judge Federal Court in which she instituted her action because that Court has said:

> "At the hearing, it was shown, without contradiction, that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination; and the cross-examination of the three Negro women who were denied registration by the registrar amply established adequate basis for the denial if the literacy test is valid. The contention of counsel for plaintiffs on the record made at the hearing, as we understand it, is not that the literacy test was discriminatingly applied against their clients, but that it is inherently void."

If this Court will read the Stipulations of Counsel (R. 6) it will see that there is not a single Stipulation from which it can even be inferred that the Registrar of Seaboard voting precinct of Northampton County has in anywise practiced any discrimination as between white and colored in applying the literacy test. The Appellant has violated the Order, or Mandate, of the 3-Judge Federal Court because that Court

instructed her to obtain a State interpretation and then fini
her case in the Federal Court. Because she now finds th
the 3-Judge Federal Court says that a literacy test is va
and there has been no discrimination practiced against h
she should not be allowed to avoid the consequences of h
own case which she chose to institute according to the jur
diction of the Federal District Court.

B

THE SUPREME COURT OF NORTH CAROLINA DID NO
DECIDE THE FEDERAL CONSTITUTIONAL ISSUE

If this Court will examine the Opinion of the Supreme Cou
of North Carolina (R. 24) it will find that the Chief Justice
the Supreme Court of North Carolina stated and passed upo
only one question, as follows, and we quote from the Opinio
of the Supreme Court of North Carolina:

> "The immediate question on this appeal is this: Is Plai
> tiff, upon the agreed statement of facts, entitled to regi
> ter for voting without meeting the test of reading a
> writing any section of the Constitution of North Caroli
> in the English language, as required by G. S. 163-28,
> amended?"

If the Court will then read the Opinion straight through
the end it will see that it consists entirely of a discussion
State constitutional questions. The whole scope of the Opi
ion is on State questions, and the mere fact that a stateme
is made in the last sentence of the Opinion as to the 14th, 15
or 17th Amendments to the Federal Constitution does n
mean that there was an express decision of such feder
questions. There is nothing in the Judgment of the Superi
Court of Northampton County, which Judgment was r
viewed by the Supreme Court of North Carolina, to indica
that the Superior Court of general jurisdiction passed upo
any federal constitutional questions at all. If this Court w
examine the Judgment of the Superior Court of Northampto
County (R. 12, 13) it will see that the Judge of the Superi
Court expressly stated (R. 13) that the Plaintiff was

entitled to be registered for the reason that she did not meet the requirements of Chapter 163, Sec. 25 of the General Statutes of North Carolina. There is nothing to show that this Judge of the Court of general jurisdiction passed on any Federal questions whatsoever.

In this view of the case certain language of this Court to our minds is decisive (BLACK v. CUTTER LABORATORIES, 351 U. S. 292, 100 L. ed. 1188, 76 S. Ct. 824):

> "The majority opinion of the Supreme Court of California contains broad statements to the effect that specific performance of the arbitration award would violate the public policy of the State. Petitioner's constitutional arguments are based on the belief that these statements established the ground on which the judgment below was based, and that therefore the decision below not only establishes a conclusive presumption of advocacy of violence from the mere fact of membership in the Communist Party, but renders unenforceable substantially all contracts entered into by members of the Party.
>
> "This Court, however, reviews judgments, not statements in opinion. Herb v. Pitcairn, 324 U. S. 117, 125, 126, 89 L. ed. 789, 794, 795, 65 S. Ct. 459; Morrison v. Watson, 154 U. S. 111, 115, 38 L. ed. 927, 929, 14 S. Ct. 995. See also Williams v. Norris (US) 12 Wheat 117, 118, 120, 6 L. ed. 571, 572. At times, the atmosphere in which an opinion is written may become so surcharged that unnecessarily broad statements are made. In such a case, it is our duty to look beyond the broad sweep of the language and determine for ourselves precisely the ground on which the judgment rests. This means no more than that we should not pass on federal questions discussed in the opinion where it appears that the judgment rests on adequate state grounds. Herb v. Pitcairn (US) supra; Williams v. Kaiser, 323 US 471, 477, 89 L. ed. 398, 403, 65 S. Ct. 363."

C

IF THIS COURT HOLDS THAT THE SUPREME COURT OF NORTH CAROLINA DECIDED BOTH STATE AND FEDERAL QUESTIONS, THEN THE DECISION OF THE STATE COURT RESTS UPON NONFEDERAL

GROUNDS, WHICH FAIRLY, INDEPENDENTLY AND ADEQUATELY SUPPORTS THE STATE COURT JUDGMENT.

This argument is based upon the theory that this Court may be of the opinion that the Supreme Court of North Carolina decided both State and Federal constitutional questions. If this is the true state of affairs, then we think it is the rule, as decided by this Court, that where the nonfederal ground is independent and adequate and is sufficiently broad to maintain the judgment of the State Court without reference to the Federal question, then this Court does not take jurisdiction. It is also true that this Court says that the nonfederal ground must also be tenable (WARD v. BOARD OF COUNTY COMMISSIONERS, 253 U. S. 17, 64 L. ed 751). By this, as we understand it, the nonfederal ground asserted must not be a mere device to prevent a review of the decision of the federal question, or, in other words, it must not be a mere pre-text or cloak to evade the decision of the federal question.

The decision of the Supreme Court of North Carolina in this case can independently, adequately and tenably rest upon the construction of the State Constitution and the validity of the registration statute as measured by the State Constitution. We have here not interwoven federal and nonfederal grounds. The ultimate decision on federal constitutional questions, as we have explained above, remains with the District Court of the United States for the Eastern District of North Carolina based upon the evidence and facts as developed by that Court. Any decision of the Supreme Court of North Carolina on the federal constitutional question could not be final because ultimate finality on such questions belongs to the Federal Courts.

ENTERPRISE IRRIG. DIST. v. FARMERS' MUT. CANAL CO., 243 U. S. 157, 61 L. ed. 644;

ARKANSAS S. R. CO. v. GERMAN NAT. BANK, 207 U. S. 270, 52 L. ed. 201;

HERB v. PITCAIRN, 324 U. S. 117, 89 L. ed. 789;

FOX FILM CORP. v. MULLER, 296 U. S. 207, 80 L. ed. 158;

DOYLE v. ATWELL, 261 U. S. 590, 67 L. ed. 814;

BEREA COLLEGE v. KENTUCKY, 211 U. S. 45, 53 L. ed. 81;

MINNESOTA v. NATIONAL TEA CO., 309 U. S. 551, 84 L. ed. 929.

There, of course, are many cases on this subject, and it is beyond the scope of this Brief to marshall all of the authorities and to try to draw fine lines of distinction. The rule is perhaps explained best in ENTERPRISE IRRIG. DIST. v. FARMERS' MUT. CANAL CO., supra, where this Court said:

> "Thus we are concerned with a judgment placed upon two grounds, one involving a Federal question and the other not. In such situations our jurisdiction is tested by inquiring whether the non-Federal ground is independent of the other and broad enough to sustain the judgment. Where this is the case, the judgment does not depend upon the decision of any Federal question and we have no power to disturb it. Hammond v. Johnston, 142 U. S. 73, 78, 35 L. ed. 941, 942, 12 Sup. Ct. Rep. 141; Eustis v. Bolles, 150 U. S. 361, 37 L. ed. 1111, 14 Sup. Ct. Rep. 131; Berea College v. Kentucky, 211 U. S. 45, 53, 53 L. ed. 81, 85, 29 Sup. Ct. Rep. 33; Waters-Pierce Oil Co. v. Texas, 212 U. S. 112, 116, 53 L. ed. 431, 433, 29 Sup. Ct. Rep. 227; Gaar, S. & Co. v. Shannon, 223 U. S. 468, 56 L. ed. 510, 32 Sup. Ct. Rep. 236; Southern P. Co. v. Schuyler, 227 U. S. 601, 610, 57 L. ed. 662, 668, 43 L. R. A. (NS) 901, 33 Sup. Ct. Rep. 277. It has been so held in cases where the judgment was rested upon a Federal ground and also upon an estoppel. Pierce v. Somerset R. Co. 171 U. S. 641, 648, 43 L. ed. 316, 319, 19 Sup. Ct. Rep. 64; Lowry v. Silver City Gold & S. Min. Co. 179 U. S. 196, 45 L. ed. 151, 21 Sup. Ct. Rep. 104, 21 Mor. Min. Rep. 113. But where the non-Federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain. See Moran v. Horsky, 178 U. S. 205, 208, 44 L. ed. 1038, 1039, 20 Sup. Ct. Rep. 856; Creswill v. Grand Lodge, K. P. 225 U. S. 246, 261, 56 L. ed. 1074,

1080, 32 Sup. Ct. Rep. 822. And this is true also where the non-Federal ground is so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review, of the decision upon the Federal question. Leathe v. Thomas, 207 U. S. 93, 99, 52 L. ed. 118, 120, 28 Sup. Ct. Rep. 30; Vandalia R. Co. v. Indiana, 207 U. S. 359, 367, 52 L. ed. 246, 248, 28 Sup. Ct. Rep. 130. But, where the non-Federal ground has fair support, we are not at liberty to inquire whether it is right or wrong, but must accept it, as we do other state decisions of non-Federal questions. Murdock v. Memphis, 20 Wall. 590, 635, 22 L. ed. 429, 444; Eustis v. Bolles, 150 U. S. 369, 37 L. ed. 1111, 14 Sup. Ct. Rep. 131, Leathe v. Thomas, supra; Arkansas Southern R. Co. v. German Nat. Bank, 207 U. S. 270, 275, 52 L. ed. 201, 203, 28 Sup. Ct. Rep. 78."

D

IN VIEW OF THE FORMER DECISIONS OF THIS COURT THE CONSTITUTIONALITY OF A LITERACY TEST HAS BEEN DECIDED, AND, THEREFORE, THERE IS NO SUBSTANTIAL FEDERAL QUESTION RAISED BY APPELLANT.

It is clear that the 3-Judge Federal Court (LASSITER v. TAYLOR, 152 F. Supp. 295) thought that the question as to the validity of a literacy test had long been settled by this Court. We take the same position and quote the reasons from the Opinion of the 3-Judge Federal Court, as follows:

"At the hearing, it was shown, *without contradiction*, that the literacy test was applied by the Registrar to white persons and Negroes alike without discrimination. * * * Attention is called to the fact that 19 States of the Union, *only 7 of which are Southern States*, prescribe educational qualifications for suffrage which are uniformly upheld and that the Supreme Court has approved them, saying in GUINN v. UNITED STATES, supra, 238 U. S. at p. 360, 35 Supreme Court, at p. 929:

"'No question is raised by the government concerning the validity of the literacy test provided for in the amendment under consideration as an independent standard since the conclusion is plain that that test rests on the exercise of state judgment and therefore cannot

be here assailed either by disregarding the state's power to judge on the subject or by testing its motive in enacting the provision.'" (Emphasis ours)

See also the following cases;

GUINN v. UNITED STATES, 238 U. S. 347, 360, 35 S. Ct. 932;

WILLIAMS v. STATE OF MISSISSIPPI, 170 U. S. 213, 18 S. Ct. 583, 42 L. ed. 1012;

DAVIS v. SCHNELL, D. C., 81 F. Supp. 872, aff'd 336 U. S. 933, 69 S. Ct. 749, 93 L. ed. 1093;

TRUDEAU v. BARNES, 5 Cir.; 65 F. 2d 563, cert. den. 290 U. S. 659, 54 S. Ct. 74, 78 L. ed. 571.

II

THE STATES HAVE A RIGHT TO REQUIRE THAT AN APPLICANT FOR REGISTRATION SHALL BE ABLE TO READ AND WRITE A PROVISION OF THE STATE CONSTITUTION IN THE ENGLISH LANGUAGE, AND THIS REQUIREMENT DOES NOT VIOLATE ANY CLAUSE OF THE FOURTEENTH AMENDMENT.

A

THE CONSTRUCTION OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA BY ITS SUPREME COURT AND DECISION OF THE SUPREME COURT OF NORTH CAROLINA SUSTAINING THE VALIDITY OF THE LITERACY TEST AS MEASURED BY THE STATE CONSTITUTION SHOULD BE ACCEPTED BY THIS COURT.

Beginning on R. 25 the Supreme Court of North Carolina in its Opinion traces the history of Article VI of the Constitution of North Carolina relating to Suffrage and the various amendments made to this Article. The Supreme Court of

North Carolina came to the conclusion that Article VI, as i
now appears in the State Constitution, (Appendix B herein
is valid and contains the proper provisions, and, furthermor
that G. S. 163-28 is valid when measured by the State Consti
tution. We ask this Court to accept the construction of th
highest appellate court of North Carolina as to its own Stat
Constitution and its own statute construed in the light o
the State Constitution.

AMERICAN FEDERATION OF LABOR v. WATSON
327 U. S. 582, 90 L. ed. 873, 66 S. Ct. 761;

PHILLIPS v. UNITED STATES, 312 U. S. 246, 85 L. ed
800, 61 S. Ct. 480;

BENEFICIAL INDUS. LOAN CORP. v. SMITH, 33
U. S. 541, 93 L. ed. 1528, 69 S. Ct. 1221;

HIGHLAND FARMS DAIRY v. AGNEW, 300 U. S. 608
81 L. ed. 835, 57 S. Ct. 549;

GLENN v. FIELD PACKING CO., 290 U. S. 177, 78 L
ed. 252, 54 S. Ct. 138;

DOUGLAS v. NOBEL, 261 U. S. 165, 67 L. ed. 590;
S. Ct. 303;

LOUISVILLE GAS & ELECTRIC CO. v. COLEMAN
277 U. S. 32, 72 L. ed. 770, 48 S. Ct. 423.

B

THE VALIDITY OF THE SO-CALLED "GRANDFATHER
CLAUSE.

In view of the former decisions of this Court the Attorne
General of North Carolina does not contend that the so-calle
"grandfather" clause which appears in a portion of Articl
VI, Sec. 4 of the State Constitution, is constitutional an
valid, nor does the Attorney General contend that the statu

tory machinery provided for the administration of the "grandfather" clause (Sec. 163-32 of the General Statutes) is constitutional and valid (GUINN v. UNITED STATES, 238 U. S. 347, 35 S. Ct. 926, 59 L. ed. 1340; LANE v. WILSON, 307 U. S. 368, 59 S. Ct. 872, 83 L. ed. 1281; MYERS v. ANDERSON, 238 U. S. 368, 35 S. Ct. 932, 59 L. ed. 1349.

It should be pointed out that the Appellant herein has never claimed the right to register under this provision, and the evidence in the Federal District Court shows that she is 41-years old. The statute not being valid, it cannot be used by the Appellant as a basis for contending that the literacy test is invalid. The Supreme Court of North Carolina (ALLISON v. SHARP, 209 N. C. 477, 184 S. E. 27 — 1936) has heretofore declared the literacy test of this State to be constitutional and valid, and as to the "grandfather" clause, it said:

> "The provisos (grandfather clause) we do not quote, as they are immaterial, the time limit having expired—1 December 1908."

In other words, the Supreme Court of North Carolina thought that because of the passage of time the effectiveness of this clause had expired and had become quiescent. This is especially true because of the great advance of Negro education in the State of North Carolina, their high rate of attendance in the public schools and the high rate of literacy.

C

THE STATE HAS A RIGHT TO REQUIRE A REASONABLE TEST OF PROSPECTIVE VOTERS, AND THE NORTH CAROLINA STATUTE DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

When we focus our attention directly on the right of Suffrage, it is clear that the 14th Amendment never did confer on anyone the right to vote. The reach of the Due Process Clause and the Equal Protection Clause extends further than the rights of citizens of the United States and includes aliens.

In fact, Sec. 2 of the 14th Amendment recognizes the right
a state to deny persons the right to vote because it provid
that the lower house of Congress may be reduced because t
state has refused to allow certain male persons to vote b
the section does not authorize any person denied registrati
to sue to compel the granting of registration.

It is plain that there has been no violation of the App
lant's rights under the Due Process of Law Clause. As to pr
cedural Due Process, the North Carolina Statute (Appellan
Brief, p. 8—LASSITER v. TAYLOR, this Appendix, Footno
No. 1) provides an appeal from denial of registration on t
part of the registrar to the county board of elections and fr
this board an appeal is provided to the Superior Court, whi
is a court of general jurisdiction, and from this Court
appeal is provided to the Supreme Court of North Caroli
It cannot be said that a literacy test of reading and writi
a provision of the North Carolina Constitution provides
arbitrary subjective test. Such claims are usually assert
under the authority of YICK WO v. HOPKINS, 118 U. S. 3
6 S. Ct. 1064, 34 L. ed. 220, and the Appellant in this ca
true to form, brings out this decision to support her cau
This argument is disposed of by the case of WILLIAMS
STATE OF MISSISSIPPI, 170 U. S. 213, 42 L. ed. 10
where the Constitution of Mississippi required, among oth
things, that the applicant for registration should be able
read any section of the Constitution or he was required to
able to understand the same when read to him or give
reasonable interpretation thereof. In commenting on t
argument in the Williams case, this Court said:

> "We do not think that this case is brought within t
> ruling in YICK WO v. HOPKINS, SHERIFF, 118 U.
> 356 (30:220) In that case the ordinances passed on d
> criminated against laundries conducted in wooden bui
> ings. For the conduct of these the consent of the bo
> of supervisors was required, and not for the conduct
> laundries in brick or stone buildings. It was admitt
> that there were about 320 laundries in the city and co
> ty of San Francisco, of which 240 were owned and c
> ducted by subjects of China, and of the whole numb
> 310 were constructed of wood, the same material t

constitutes nine tenths of the houses of the city, and that the capital invested was not less than $200,000. * * *

"* * * Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. * * *

"* * * This comment is not applicable to the Constitution of Mississippi and its statutes. They do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them."

This whole argument has again been reviewed by a 3-Judge Federal Court in an attack upon a Mississippi Statute which required every elector to be able to read and write any section of the Constitution and give a reasonable interpretation to the county registrar, and further required that the applicant demonstrate to the registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. In rejecting the argument based upon YICK WO v. HOPKINS, supra, the Court said (DARBY v. DANIEL, S. D. Miss., 168., F. Supp. 170):

"(2) Plaintiffs base their argument that the constitutional provisions under attack are void on their face chiefly upon four Supreme Court decisions: Yick Wo v. Hopkins, Sheriff, 1886, 118 U. S. 356; Guinn, et al v. United States, *supra;* Lane v. Wilson, 1939, 307 U. S. 268; and Schnell et al v. Davis, 1949, 336 U. S. 933. Analysis of those cases will reveal that they do not apply to the constitutional and statutory provisions before us. * * *

"* * * The Supreme Court rejected the decision of the California Court, holding that the ordinances 'seem intended to confer, and actually do confer, not a discretion, to be exercised upon consideration of the circumstances of each case but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons . . . . The power given to them is not confided to their discretion in the legal sense of that

term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint.' (Pp. 366-367.) The final conclusion of the Supreme Court is epitomized in graphic words copied in the margin. The quotation from the Supreme Court's opinion as applied to the facts there refutes the argument the case is called upon to furnish here. The case will be discussed further in our analysis of Schnell, *infra*. The Constitution and statutes of Mississippi do not contain any license for the exercise of arbitrary power. Plaintiffs are entitled to relief here if they can show the discrimination which was admitted there. * * *

"* * * Viewed most favorably to the contentions of the plaintiffs here, it would be assumed that the Supreme Court decided that the Boswell Amendment placed final and arbitrary powers in the hands of the board of registrars, which power the board had in fact exercised arbitrarily in favor of white applicants and against Negro applicants. As shown above, this was the ground common to Lane and Yick Wo, the two cases forming the predicate for the Supreme Court's action in Schnell.

"It is important to note that the Supreme Court, after citing these two cases, directed a comparison with Williams v. Mississippi 1898, 170 U. S. 213. There, the literacy tests of the Mississippi Constitution of 1880 were upheld and, as demonstrated infra, the Court held categorically that the doctrine of Yick Wo did not apply. The clear meaning of the reference to the three cases by the Supreme Court was that in contrast with the valid requirements of the Mississippi Constitution, the Boswell Amendment involved in *Schnell* came under the condemnation of the two cases wherein the Supreme Court had pointed out specifically that arbitrary power granted and discriminatorily used could not stand the test of constitutionality."

The above cited case, DARBY v. DANIEL, 168 F. Supp. 170, discusses the whole question of literacy and upholds the revised test required by the Mississippi Constitution, which is far more rigid than the test now before the Court. The North Carolina statute does not require any explanation of any of the provisions of the Constitution, and, in fact, the language of the sections can be fairly interpreted as meaning that the Appellant can take her own section to read and

write. The findings of fact show that the Appellant admits that she cannot read and write and there is no finding of fact showing any discrimination as between white and colored applicants for registration. In fact, the Opinion of the 3-Judge Federal Court (LASSITER v. TAYLOR, supra) specifically states:

> "At the hearing, it was shown, without contradiction, that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination; that cross-examination of the three Negro women who were denied registration by the registrar amply established adequate basis for the denial if the literacy test is valid."

It is well settled that it is within the power of the states to provide qualifications as to conditions precedent to voting and also to provide for the orderly administration of the Suffrage privilege for the purpose of preventing fraud.

UNITED STATES v. CRUIKSHANK, 92 U. S. 542, 555, 23 L. ed. 588;

MINOR v. HAPPERSETT, 88 U. S. 162, 170, 22 L. ed. 627;

MITCHELL v. WRIGHT, 69 F. Supp. 698, 703;

UNITED STATES v. REESE, 92 U. S. 214, 217, 23 L. ed. 563;

DAVIS v. SCHNELL, 81 F. Supp. 872, 876; aff'd. 336 U. S. 933, 93 L. ed. 1093;

TRUDEAU v. BARNES, 65 F. 2d 563; cert. den. 290 U. S. 659;

SNOWDEN v. HUGHES, 321 U. S. 1, 7, 88 L. ed. 497.

Suffrage is a political right reserved and retained by the states subject to federal constitutional limitations against arbitrary and discriminatory practices. The right to vote is a political right and is not on a parity with so-called "civil

rights", "vested rights" or "property rights", and the right of Suffrage is not conferred by the United States Constitution. It is derived from the states under their constitutions and statutes.

POPE v. WILLIAMS, 193 U. S. 621, 48 L. ed. 817;

UNITED STATES v. CRUIKSHANK, 92 U. S. 542, 555, 23 L. ed. 588;

MASON v. MISSOURI, 179 U. S. 328, 335, 45 L. ed. 214;

MINOR v. HAPPERSETT, 88 U. S. 162, 172, 173, 22 L. ed. 627;

BREEDLOVE v. SUTTLES, 302 U. S. 277, 283, 82 L. ed. 252;

SMITH v. BLACKWELL, 34 F. Supp. 989, aff'd. 115 F. 2d 186.

It is the contention of the Attorney General of North Carolina that a literacy test such as ours has already been upheld by this Court, and it is too late now to make an attack on its validity. In GUINN v. UNITED STATES, supra, this Court said:

> "No time need be spent on the question of the validity of the literacy test, considered alone, since, as we have seen, its establishment was but the exercise by the state of lawful power vested in it, not subject to our supervision, and indeed, its validity is admitted. Whether this test is so connected with the other one relating to the situation on January 1, 1866, that the invalidity of the latter requires the rejection of the former, is really a question of state law; but, in the absence of any decision on the subject by the supreme court of the state, we must determine it for ourselves. *We are of opinion that neither forms of classification nor methods of enumeration should be made the basis of striking down a provision which was independently legal, and therefore was lawfully enacted, because of the removal of an illegal provision with which the legal provision or provisions may have been associated.*" (*Emphasis ours*)

See also:

WILLIAMS v. STATE OF MISSISSIPPI, 170 U. S. 213, 18 S. Ct. 583, 42 L. ed. 1012;

DAVIS v. SCHNELL, D. C., 81 F. Supp. 872, aff'd. 336 U. S. 933, 69 S. Ct. 749, 93 L. ed. 1093;

TRUDEAU v. BARNES, C. C. A. 5, 65 F. 2d 563, cert. den. 290 U. S. 659, 54 S. Ct. 74, 78 L. ed. 571.

The case of DAVIS v. SCHNELL, 81 F. Supp. 872 does not support the Appellant's contentions that a literacy test standing alone is invalid. In fact, this case supports our contention because as to the literacy test alone, the Court was careful to say:

> "The states, not the Federal Government, prescribe the the qualifications for the exercise of the franchise, and Federal Courts are not interested in these qualifications unless they contravene the Fifteenth Amendment or other provisions of the United States Constitution : . .
>
> "The original Section 181 of the Constitution of Alabama has stood for nearly 50 years AND HAS PROVIDED DEFINITE STANDARDS FOR PASSING UPON THE QUALIFICATIONS OF PROSPECTIVE ELECTORS. The original section provided for two qualifications, the possession of either of which was sufficient to permit registration. An applicant was required to be able to 'read and write any article of the Constitution of the United States in the English language,' or in the alternative, he could qualify if he owned, assessed and paid taxes on real or personal property of an assessed value of $300. The Boswell Amendment dropped the property qualification, and adopted a qualification requiring not only that an applicant be able to 'read and write,' but also that he be able to understand and explain any article of the Constitution of the United States in the English language." 81 F. Supp., at pp. 876-877.

This leaves for consideration the Privileges and Immunities Clause of the 14th Amendment. This Court has held on several occasions that this Clause does not confer on anyone the right to vote or restrict the State in its power to impose

reasonable educational requirements, and this, of course, must be true as to all clauses of the 14th Amendment or it would not have been necessary to have adopted the 15th Amendment.

In MINOR v. HAPPERSTETT, 88 U. S. 162, 171, 22 L. ed. 627 (1874) decided just six years after the 14th Amendment was ratified, the United States Supreme Court speaking through Chief Justice Waite, said:

> "The Amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly, it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the Constitution and laws of the United States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizens.
>
> "It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. This makes it proper to inquire whether suffrage was co-extensive with the citizenship of the States at the time of its adoption. If it was, then it may with force be argued that suffrage was one of the rights which belonged to citizenship, and in the enjoyment of which every citizen must be protected. But if it was not, the contrary may with propriety be assumed.
>
> "When the Federal Constitution was adopted, all the States with the exception of Rhode Island and Connecticut had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of these constitutions we find that in no State were all citizens permitted to vote. Each State determined who should have that power. (A review of the diverse requirements of the eleven states having constitutions of their own in 1789 then follows.)
>
> "In this condition of the law in respect to suffrage in the several states it cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication. So important a change in the

condition of citizenship as it actually existed, if intended, would have been expressly declared . . . .

"And still again, after the adoption of the Fourteenth Amendment, it was deemed necessary to adopt a Fifteenth as follows: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color or previous condition of servitude.' The Fourteenth Amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?"

In *Pope v. Williams*, 193 U. S. 621, 48 L. ed. 817, 24 S. Ct. 573 (1903), the Court speaking through Mr. Justice Peckham said:

"The privilege to vote in any State is not given by the Federal Constitution or by any of its amendments. It is not a privilege springing from citizenship of the United States. It may not be refused on account of race, color, or previous condition of servitude, but it does not follow from mere citizenship of the United States. *In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.*" (Emphasis ours)

There is no contention by the Appellant that G. S. 163-28, or the Registrar, the Board, or the Superior Court in administering it makes or made any discrimination between individuals. It is conceded that the appellant is not able to read and write any section of the Constitution of North Carolina, and it is not contended that she has been treated differently from any other person of like illiteracy.

In BREEDLOVE v. SUTTLES, 302 U. S. 277, 283 (1937), the Court speaking through Mr. Justice Butler said:

"To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. *Privilege of voting is not derived from the United States but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate.*" (Emphasis ours)

See also: PIRTLE v. BROWN, 118 Fed. 2d 218, cert. den. 314 U. S. 621, 86 L. ed. 499, 62 S. Ct. 64 (1942); U. S. v. ANTHONY, 24 Fed. Cas. No. 14, 459 (C. C. N. Y., 1873); DAVIS v. TEAGUE, 220 Ala. 309, 125 So. 51, App. dismissed, 281 U. S. 695, 74 L. ed. 1123, 50 S. Ct. 248.

D

REQUIRING A PERSON TO BE ABLE TO READ AND WRITE A PROVISION OF A STATE CONSTITUTION AS A LITERACY TEST DOES NOT VIOLATE THE FIFTEENTH AMENDMENT.

The 15th Amendment does not grant any affirmative right of Suffrage. It merely provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude." It is true that where States originally confined the right of Suffrage to white men that in this sense the Amendment can be considered as conferring a right of Suffrage. It is believed, however, that the general result is merely to remove the disability of color, that the Amendment is negative in its approach, and this leaves colored people on the same basis as white people as to Suffrage and subject to the same privileges and disqualifications Certainly in this case no question arises under the 15th Amendment since no racial test was imposed but merely a literacy test which the 3-Judge Federal Court found was imposed without discrimination. It is stipulated in Stipulation No. 20 that aside from the Appellant's failure, refusal and inability to read and write any section of the Constitution of North Carolina the Appellant meets all statutory qualifi-

cations for registration. Appellant seems to take the view that illiteracy and membership in her race are one and the same thing but this is not true. According to the estimates of the State Board of Education during the Year of 1958 there were 747,725 white pupils in the public schools of the State, and there were 313,446 colored students in the public school system of the State. Roughly speaking, the ratio of the colored population to the white lies somewhere between twenty and thirty percent, or, in other words, somewhere between twenty and thirty percent of the total population is colored. It will thus be seen that the number of colored students in the public schools is a very high ratio in proportion to the colored population. That the 15th Amendment is not applicable, see: UNITED STATES v. REESE, 92 U. S. 214, 23 L. ed. 563; UNITED STATES v. CRUIKSHANK, 92 U. S. 555, 23 L. ed. 588; GUINN v. UNITED STATES, 238 U. S. 347, 35 S. Ct. 926, 59 L. ed. 1340.

The cases cited by the Appellant, dealing with primaries and elections, in our opinion have nothing to do with the questions herein involved. There was no question as to the eligibility of voters in the CLASSIC CASE and in the ALL-WRIGHT CASE.

E.

THE NORTH CAROLINA LITERACY TEST DOES NOT VIOLATE THE SEVENTEENTH AMENDMENT.

It is hard to see how Appellant can contend that the literacy test provisions of the North Carolina Constitution and as embodied in G. S. 163-28 can violate the 17th Amendment. On the contrary, the 17th Amendment recognizes the authority of the States in the Suffrage field, for it says: "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

That the appellate courts of the various States are in accord with the general interpretations and arguments in this Brief, see: ALLEN v. MERRILL, 305 P. 2d 490 (Utah);

FRANKLIN v. HARPER, 55 S. E. 2d 221 (Ga.); WILKINSON v. QUEEN, 269 S. W. 2d 223 (Ky.); FISCELLA v. NULTON, 92 A. 2d 103 (N. J.); MORRISON v. LAMARRE, 65 A. 2d 217 (R. I.); TEDESCO v. BOARD OF SUPERVISORS OF ELECTIONS, 43 So. 2d 514 (La.).

The requirement as to reading and writing does not demand perfect English but the test is the ability to read in a reasonably intelligent manner and to write in a fairly legible way, and the test can be complied with even though every word may not be accurately pronounced or spelled. See: HELTON v. BURDETTE, 203 S. W. 189 (Ky.) and WILLIAMS v. HAYS, 193 S. E. 1046 (Ky.). That an applicant in order to meet the test does not have to read English fluently, see also HILL v. HOWELL, 127 P. 211; 215 (Wash.).

That such a literacy provision is not an unconstitutional delegation of power, see DOUGLAS v. NOBEL, 261 U. S. 165, 67 L. ed. 590, 43 S. Ct. 303.

CONCLUSION

The various States of the Union have had literacy tests in some form or other for many decades. It is submitted that reading and writing a provision of a State constitution is a very minimum considering the educational facilities of the State. The Court will find in Appendix C in this Brief the number of states having literacy tests, which information is derived from a pamphlet published by the Council of State Governments, March, 1956, designated as Volume XII, and entitled "Qualifications for Voting—Summaries of State Laws Governing Voter Qualifications, Registration and Penalties for Violations—Constitutional and Statutory Provisions of the States; BX-302". It is submitted that a democratic government depends upon the education and mental alertness of its citizens. It was not intended that everyone should be reduced to the lowest common denominator, and while equality of opportunity is inherent in our governmental structure, neverthelss, it is submitted that our form of gov-

ernment guarantees the right to be unequal. Certainly Robert M. Hutchins, former college president, and now President of the Fund for the Republic, cannot be classed as a reactionary. In his speech entitled "Is Democracy Possible?" which he made on receiving the Sydney Hillman Award for Meritorious Public Service, in commenting on his faith in a democratic form of government, he said:

> "The faith rests on the propositions that man is a political animal that participation in political decisions is necessary to his fullfillment and happiness, *that all men can and must be sufficiently educated and informed to take part in making these decisions*, that protection against arbitrary power, though indispensable, is insufficient to make either free individuals or a free society; that such a society must make positive provisions for its development into a community learning together; for this is what political participation, government by consent and the civilization of the dialogue all add up to." (Emphasis ours)

The Attorney General asks this Court to affirm the decision below.

Respectfully submitted,

MALCOLM B. SEAWELL
Attorney General of North Carolina

RALPH MOODY
Assistant Attorney General

Counsel for the State of North Carolina
Amicus Curiae

APPENDIX A

LOUISE LASSITER, et al., Plaintiffs

v.

HELEN H. TAYLOR, Registrar Seaboard Precinct, Defendant.

No. 1019

UNITED STATES DISTRICT COURT
E. D. North Carolina
Raleigh Division.

Argued April 19, 1957

Decided June 10, 1957

Taylor & Mitchell, Raleigh, N. C., and James R. Walker, Statesville, N. C., for plaintiffs.

Vinson Bridgers, of Fountain, Fountain, Bridgers & Horton, Tarboro, N. C., E. N. Riddle, Charlotte, N. C., George Patton, Atty. Gen., and Robert Giles, Assistant Attorney General of North Carolina, for defendant.

Before PARKER, Chief Judge, and GILLIAM and WARLICK, District Judges.

PER CURIAM.

This is an action begun as a class action by a Negro woman resident in Northampton County, North Carolina, against the registrar of the voting precinct in which she resides, to have the Court declare unconstitutional and void the literacy test for voters prescribed by Section 4 of Article VI of the Constitution of North Carolina and Sections 163-28 of the General Statutes of North Carolina as that section appeared at the time of the institution of the action and for an injunc-

tion restraining the Registrar from denying registration to plaintiff on the ground of failure to comply with the literacy test. After the action was instituted, the General Assembly of North Carolina enacted a statute, the effect of which was to repeal the old statute containing the so-called "grandfather clause" and requiring that ability to read and write be shown to the satisfaction of the registrar and to substitute therefor a statute prescribing a literacy test without any "grandfather" clause and without any reference to "satisfaction of the registrar", and providing an appeal from the action of the registrar from denial of registration to the county board of elections and thence to the Superior Court of the County. Act of March 29, 1957. This statute was attacked as unconstitutional in a reply filed by plaintiff. Two other Negro women who had been denied registration by the same registrar were allowed to intervene and make themselves parties to the action. A court of three judges was constituted as required by statute, a hearing was had at which the parties were allowed to introduce all the evidence which they offered, were heard at length on their contentions and were allowed additional time for the filing of briefs.

At the hearing, it was shown, without contradiction, that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination; and the cross examination of the three Negro women who were denied registration by the Registrar amply established adequate basis for the denial if the literacy test is valid. The contention of counsel for plaintiffs on the record made at the hearing, as we understand it, is not that the literacy test was discriminatingly applied against their clients, but that it is inherently void.

No question remains in the case with respect to Section 163-28 of the General Statutes as that section read at the time of the institution of this action. Neither injunction nor declaratory relief with regard thereto is appropriate, as that section with its "grandfather clause" and with its requirement that ability to read and write be shown to the satisfaction of the registrar has been superseded by the Act of March

29, 1957, which contains neither of these provisions and which provides administrative remedies for those claiming that they have been improperly denied the right to register.[1]

The only question in the case is whether the Act of March 29, 1957 should be declared void and its enforcement against plaintiffs enjoined by the court on the ground that it is violative of their rights under the Federal Constitution. We need not consider whether it is violative of provisions of the State Constitution, as argued by plaintiffs; for this does not present a federal question. And no question is presented as to its being discriminatorily applied to plaintiffs, since plaintiffs have not applied for registration under its provisions and have not exhausted the administrative remedies which it provides. Plaintiffs argue, however, that it is unconstitutional because they say it was enacted pursuant to the provisions of Article VI, Section 4 of the State Constitution and is vitiated by the discriminatory provisions contained in that section.[2]

There can be no question but that Article VI, Section 4 of the State Constitution was, when enacted, void as violative of the provisions of the 14th and 15th Amendments to the Constitution of the United States. Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340; Myers v. Anderson, 238 U. S. 368, 35 S. Ct. 932, 59 L. Ed. 1349. It is argued, however, that the "grandfather clause" of that section has no application to voters who reached voting age subsequent to 1908, approximately 50 years ago, and that the "grandfather clause," which would render the section void, no longer has any practical application. It is further argued that, if the section be held void, the state has the right to prescribe an educational qualification for suffrage in the exercise of its sovereign power as a state, since the provisions of a state constitution are limitations upon and not grants of power. 11 Am. Jur. p. 619. Attention is called to the fact that nineteen states of the Union,[3] only seven of which are Southern states, prescribe educational qualifications for suffrage which are uniformly upheld[4] and that the Supreme Court has approved them, saying in Guinn v. United States, supra, 238 U. S. at page 360, 35 S. Ct. at page 929:

"No question is raised by the government concerning the validity of the literacy test provided for in the amendment under consideration as an independent standard since the conclusion is plain that that test rests on the exercise of state judgment and therefore cannot be here assailed either by disregarding the state's power to judge on the subject or by testing its motive in enacting the provision."

Before we take any action with respect to the Act of March 27, 1957, however, we think that it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution. Government and Civic Employees Organizing Committee etc. v. S. F. Windsor, 77 S. Ct. 838. We think, also, that administrative remedies provided by the act should be exhausted before action by the federal courts is invoked. We shall accordingly enter an order staying action herein but retaining jurisdiction for a reasonable time to enable plaintiffs to take action in the courts of North Carolina to obtain an interpretation of the statute and to exhaust administrative remedies thereunder.

Action stayed.

Footnotes to Opinion

1. The Act of March 29, 1957 is as follows:

"Sec. 1. Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section.

"Sec. 2. Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 p. m. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age and address of the appealing party, and shall state the reasons for appeal.

"Sec. 3. Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elections, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the members of the board shall be the decision of the board. All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matter pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board.

"Sec. 4. Any person aggrieved by a final order of a county board of elections may at any time within ten (10) days from the date of such order appeal therefrom to the Superior Court of the county in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of that precinct. The court shall not be

authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the superior court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions.

"Sec. 5. All laws and clauses of laws in conflict with this Act are hereby repealed.

"Sec. 6. This Act shall be effective upon its ratification."

2. Article VI, Section 4 of the Constitution of North Carolina is as follows:

"Sec. 4. Qualification for registration.—Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section two of this article."

3. The states which prescribe educational qualifications for suffrage are: *Alabama* Tit. 17, sec. 35, Ala. Code; *Arizona* Ariz. Revised Stat. Title 16, sec. 16-101; *California* Deering's Cal. Code, Elections, sec. 220, West's Ann. Elections Code, sec. 220; *Connecticut* Conn. Gen. Stat. Title 11, secs. 991, 992;

Delaware Del. Code Ann. ch. 17, sec. 1701; *Georgia* Ga. Code Ann. secs. 34-117, 34-120, 34-122; *Louisiana* LSA—Revised Stat. of 1950, Title 18, sec. 31; *Maine* Revised Statutes of Maine, ch. 3, sec. 2; *Massachusetts* Const., Articles of Amendment, Art. XX, sec. 122. See also C. 51, sec. 1 of Ann. Laws of Massachusetts; *Mississippi* Miss. Code Ann. sec. 3213; *New Hampshire* Revised State Ann. 55:10-55:16, *New York* McKinney's New York Consolidated Laws, c. 17, Election Law, sec. 150; *Oklahoma* Tit. 26, sec. 61, Okl. Stat. Ann; *Oregon* Ore. Compiled Laws Ann. vol. 5, sec. 81-103; *South Carolina* S. C. Code, sec. 23-62; *Virginia* Const. secs. 30, 20, Code of Va. sec. 24-67 et seq; *Washington* Remington's Revised Stat. of Wash. sec. 5114-11; *Wyoming* Wyoming Compiled Stat. Ann. sec. 31-1205.

4. Guinn v. United States, 238 U. S. 347, 360, 35 S. Ct. 932; Williams v. State of Mississippi, 170 U. S. 213, 18 S. Ct. 583, 42 L. ed. 1012; Davis v. Schnell, D. C., 81 F. Supp. 872, affirmed 336 U. S. 933, 69 S. Ct. 749, 93 L. ed. 1093; Trudeau v. Barnes, 5 Cir., 65 F. 2d 563, certiorari denied 290 U. S. 659, 54 S. Ct. 74, 78 L. ed. 571.

APPENDIX B

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. (The 19th amendment to the United States Constitution, ratified Aug. 6, 1920, provided that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex." North Carolina accordingly by c. 18, Extra Session 1920, provided for the registration and voting of women.)

Sec. 2. *Qualifications of voter.* Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this Article, shall be entitled to vote at any election held in this State; provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote unless the said person shall be first restored to citizenship in the manner prescribed by law.

Sec. 3. *Voters to be registered.* Every person offering to vote shall be at the time a legally registered voter as herein prescribed and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general

registration laws to carry into effect the provisions of this article.

Sec. 4. *Qualification for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: *Provided,* he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed; and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration; and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article.

Sec. 5. *Indivisible plan; legislative intent.* That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and make them so dependent upon each other, that the whole shall stand or fall together.

Sec. 6. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and elections by the General Assembly shall be *viva voce.*

Sec. 7. *Eligibility to office; official oath.* Every voter in North Carolina except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office, he shall take and subscribe the following oath:

"I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the

United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ..... So help me, God."

Sec. 8. *Disqualification for office.* The following classes of persons shall be disqualified for office: *first,* all persons who shall deny the being of Almighty God, *second,* all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

Sec. 9. *When this chapter operative.* That this amendment to the Constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment.

APPENDIX C

We give below a brief statement of the literacy test in each state as taken from "Volume XII of the Constitutional and Statutory Provisions of the States," as published by the Council of State Governments, as follows:

ALABAMA

"*Literacy*—Must be able to read and write in English any article of the Constitution of the United States which may be submitted to him by board of registrars (also Code Supp., Sec. 32). Those persons who were registered as voters before 1903 are still qualified and need not register again. (Const. of Alabama, Amendment XCI to Sec. 181)."

ARIZONA

"*Literacy*—Unless physically disabled, must be able to read the Constitution of the United States in English and to write his name."

CALIFORNIA

"*Literacy*—Must be able to read the Constitution in English and to write his name unless physically disabled or unless an elector or over 60 years old on October 10, 1911."

CONNECTICUT

"*Literacy*—Must be able to read in English any article of the Constitution or any section of the statutes of the state."

DELAWARE

"*Literacy*—Must be able to read state constitution in English and to write his name if not physically disabled. This provision shall not apply to persons who were 21 years old or over and were United States citizens on January 1, 1900."

GEORGIA

"*Literacy*—Must be able to read and write correctly in English any paragraph of the Constitution of the United States or of Georgia (Const. of Georgia of 1945, Section 2-704). The registrar shall mark on the registration card whether or not applicant can so read or write and whether inability to do so is due to physical handicap (Code, 1951 Supp., Sections 34-111, 34-120)."

LOUISIANA

"*Literacy*—Shall be able to read and write and unless physically disabled shall fill out his application for registration in writing in English or in his mother tongue and shall sign his name. If he cannot write English, he may write it in his mother tongue from the dictation of an interpreter. If he is unable to sign his name, he may make his mark authenticated by the registrar who shall then read the application to him through an interpreter."

MAINE

"*Literacy*—Unless prevented by physical disability or unless he had the right to vote on January 4, 1893, must be able to read the constitution of the state in English and to write his name (Sec. 20; 1955 Supp., 2)."

MASSACHUSETTS

"*Literacy*—Unless physically disabled, must be able to read the Constitution of Massachusetts in English and to write his name."

MISSISSIPPI

"*Literacy*—Must be able to read any section of state constitution or, if unable to read same, be able to understand same when read to him or give a reasonable interpretation thereof (Code, Sec. 3213)."

NEW HAMPSHIRE

"*Literacy*—No person shall have the right to vote who shall not be able to read the constitution in English and to write unless prevented by a physical disability. This shall not apply to persons who voted in 1903, nor to persons who were 60 years old or over on January 1, 1904 (Const. of New Hampshire, Part First, Bill of Rights, (Art.) 11th; Rev. Laws, ch. 32, Sec. 8)."

NEW YORK

"*Literacy*—Unless he became entitled to vote prior to January 1, 1922, must, in addition to above qualifications, be able to read and write English unless prevented by physical incapacity. (SEE, ALSO: 1955 Supp., Sec. 367)."

NORTH CAROLINA

"*Literacy*—Must be able to read and write any section of the Constitution in English, except that this shall not be required of a male person who was on January 1, 1867, or earlier, entitled to vote under the laws of any state in the United States where he then resided or to a lineal descendant of such person, provided that said elector shall have registered prior to December 1, 1908 (Sections 163-28, 163-32, 163-40)."

OKLAHOMA

"*Literacy*—Must be able to read and write any section of the Constitution of Oklahoma; but this shall not apply to any person who was on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government or who at that time resided in some foreign nation, or to a lineal descendant of such person."

OREGON

"*Literacy*—Must be able to read and write English (also Rev. Stat., Sec. 247.040.)"

OUTH CAROLINA

"*Literacy*—Must be able to read and write any section of tate constitution or must be able to show that he owns and as paid all taxes collectible during previous year on proper- y in this state assessed at $300 or more."

IRGINIA

"*Literacy*—Applicant for registration, unless physically nable to do so, shall make application to the registrar in is own handwriting without aid, suggestion, or memoran- lum in the presence of the registrar (1954 Supp., Sec. 24-68). Iowever, Section 24-450 contains penalty for deceiving voter vho cannot read the language in which ballot is printed."

VASHINGTON

"*Literacy*—Whether applicant was a legal voter of the tate on November 3, 1896, or is able to read and speak Eng- ish so as to comprehend the meaning of ordinary English rose and, in case the registration officer is not satisfied in hat regard, he may require the applicant to read aloud and explain the meaning of some ordinary English prose."

WYOMING

"*Literacy*—Must be able to read the constitution of the tate unless prevented by physical disability, providing that ny person who was a qualified voted on July 10, 1890, shall ontinue to be qualified."

In The

Supreme Court of The United States

October Term, 1958

No. 584

LOUISE LASSITER, APPELLANT,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

Appeal From The Supreme Court of The State Of North Carolina

BRIEF OF APPELLEE

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In The

Supreme Court of The United States

October Term, 1958

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LOUISE LASSITER, APPELLANT,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

Appeal From The Supreme Court of The State Of North Carolina

BRIEF OF APPELLEE

JURISDICTION

The appellee agrees with the appellant that this Court has jurisdiction to hear this appeal under the provisions of 28 U. S. C. 1257 (2). The District Court's retention of jurisdiction over the action brought by the appellant against the registrar (Lassiter v. Taylor, Registrar, 152 F. Supp. 295) did not deprive the state courts of jurisdiction over this new proceeding under the state statute against the defendant board. In this proceeding the appellant has, from its inception, attacked the validity of the state statute on the ground that it violates the Constitution of North Carolin and also on the ground that it violates the Constitution of the United States.

The Supreme Court of North Carolina had jurisdiction to decide, was obliged in this proceeding to decide, and did decide both of these questions presented to it by the appellant, and

sustained the statute against both of the attacks launched by the appellant. Its decision on the validity of the statute under the Constitution of North Carolina is conclusive and is not subject to review by this Court, but its decision as to its validity under the Constitution of the United States is subject to review by this Court in this proceeding. The appellee board submits that the decision of the Supreme Court of North Carolina on the federal questions raised by the appellant was correct and should be now affirmed by this Court.

The final judgment of the Supreme Court of North Carolina in this proceeding was entered April 21, 1958. (R. 34). The appellant filed her notice of appeal to this Court July 2, 1958 (R. 35). This Court noted probable jurisdiction December 15, 1958. (R. 39).

STATUTE INVOLVED

This appeal does not involve any part of the Constitution of North Carolina. It involves no statute except Section 163-28 of the General Statutes of North Carolina, which is set forth at page 124 of the 1957 Cumulative Supplement to Volume 3C of the General Statutes of North Carolina, and which reads as follows:

> "§ 163-28. *Voter must be able to read and write; registrar to administer section.*—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section."

STATEMENT OF THE CASE

Prior to the institution of this proceeding, this appellant Louise Lassiter, brought an action in the United States District Court for the Eastern District of North Carolina, not against the present defendant, the Board of Elections, but against the registrar of the precinct where she desires to register and vote. The purpose of that action was to enjoin the registrar from denying registration to this appellant and

to declare unconstitutional and void Article VI, Section 4, of the Constitution of North Carolina and Section 163-28 of the General Statutes of North Carolina.

The statute, as then written, like the section of the Constitution, after providing that an applicant for registration as a voter must be able to read and write any section of the Constitution in the English language, contained a "Grandfather Clause" of the type held unconstitutional by this Court in Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914). The statute, as then written, required the applicant to show such ability "to the satisfaction of the registrar."

That action was heard by a Three-Judge District Court April 19, 1957, and decided June 10, 1957. Lassiter v. Taylor, Registrar, 152 F. Supp. 295, (E. D. N. C., 1957). After it was instituted but before it was heard, the General Assembly of North Carolina enacted a new Section 163-28 of the General Statutes of North Carolina, which is the statute involved in the present proceeding. This Act was duly ratified April 12, 1957. (Appendix A hereto). As the District Court said in its opinion, the effect was:

> "To repeal the old statute containing the so-called 'grandfather clause' and requiring that ability to read and write be shown to the satisfaction of the registrar and to substitute therefor a statute prescribing a literacy test without any 'grandfather clause' and without any reference to 'satisfaction of the registrar' and providing an appeal from the action of the registrar, from denial of registration to the county board of elections and thence to the Superior Court of the County."

In its opinion in the action which the appellant had brought against the registrar, the Three-Judge Court said:

> "At the hearing, *it was shown, without contradiction, that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination;* and the cross examination of the three Negro women who were denied registration by the registrar amply establish-

ed adequate basis for the denial if the literacy test is valid. The contention of counsel for plaintiffs on the record made at the hearing, as we understand it, is not that the literacy test was discriminatingly applied against their clients, but that it is inherently void." (Emphasis added).

The Three-Judge Court then held: (1) No question remains as to the former statute which has been repealed; (2) Article VI, Section 4, of the Constitution of North Carolina was void when enacted; and (3) the Three-Judge Court would take no action with respect to the present statute until it had been interpreted by the Supreme Court of North Carolina and the administrative remedies provided in the present statute were exhausted.

Twelve days later, June 22, 1957, the appellant applied to the precinct registrar for registration as a voter *"for and in a special election scheduled to be held on July 13, 1957, for the voting citizens of Northampton County."* (R. 7, paragraph 6. Emphasis added). The registrar thereupon handed her a printed copy of the Constitution of North Carolina and requested her to read certain sections of it. (R. 7, paragraph 8). The appellant "declined and refused to read the proffered sections of the said Constitution, *or any other section thereof*", and for this reason alone the registrar refused to register her as a voter in the special election. (R. 8, paragraphs 9 and 10). (Emphasis added).

Pursuant to the statute, the appellant appealed from the registrar to the defendant Board of Elections which heard her appeal *de novo*. At that hearing, the board supplied her with a printed copy of the Constitution of North Carolina and requested her to read certain designated sections of it. Upon her refusal to read "the proffered sections of said Constitution, *or any other section thereof*", (Emphasis added) the defendant Board of Elections ordered that she be denied registration. (R. 8 and 9, paragraphs 11 to 16).

The appellant then appealed to the Superior Court of Northampton County, as the statute permitted her to do. There she

waived her statutory right to trial *de novo* by jury (R. 6) and consented that her alleged right be heard and determined by the Court upon an agreed statement of the facts which is set forth in the record. (R. 6 to 10). Among these stipulations are the following:

> "19. That the said Louise Lassiter, *because of her lack of educational qualifications*, on June 22, 1957, and continuously since said date until the present date, *is unable to and has failed and refused to write or read*, or attempt to write or read, *any section* of the Constitution of North Carolina or any section of the Constitution of the United States in the English language. (Emphasis added).
>
> "20. That aside from her failure, refusal and inability to read or write any section or sections of the Constitution of North Carolina, or any section or sections of the Constitution of the United States in the English language, the said Louise Lassiter meets the other statutory qualifications for eligibility to be registered as a voter in Seaboard Precinct, Northampton County, North Carolina." (R. 9).

Upon the facts so agreed and stipulated, the Superior Court of Northampton County entered its judgment that the appellant is not entitled to be registered as a voter. (R. 12).

From the judgment of the Superior Court the appellant appealed, as she was entitled to do by the statute, to the Supreme Court of North Carolina, where she was duly heard upon all questions of law raised by her in her assignments of error and her statement of her case on appeal. (R. 15 to 19). The Supreme Court of North Carolina affirmed the judgment of the Superior Court of Northampton County for the reasons set forth in its opinion (R. 19 to 33), holding: (1) On April 12, 1957, when the present statute was ratified, there was nothing in the Constitution of North Carolina which prevented the General Assembly of the State from enacting such a statute, and, therefore, so far as the law of the State is concerned, it is a valid statute; and (2) the provisions of the statute apply alike to all who present themselves for registration to vote, so there is no conflict between Section 163-28 of the General

Statutes and the Fourteenth, Fifteenth or Seventeenth Amendments to the Constitution of the United States.

SUMMARY OF ARGUMENT

I. The only statute involved in this appeal is Section 163-28 of the General Statutes of North Carolina. Section 163-32, to which the appellant refers in her brief at page 10, was repealed by the Act of April 12, 1957. (Appendix A hereto).

II. The "Grandfather Clause" contained in Article VI, Section 4, of the Constitution of North Carolina, is void, being in conflict with the Fifteenth Amendment. Lassiter v. Taylor, 152 F. Supp. 295 (E. D. N. C., 1957); Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914). By reason of the provision of Section 5 of Article VI, the Article (Appendix B hereto) is an indivisible whole. Thus, the entire Article is void. Consequently, there is now no provision in the Constitution of North Carolina concerning suffrage.

The adoption of the amendment to Article VI by the people of North Carolina in 1945 could not, of course, validate the "Grandfather Clause" in Section 4, but the Supreme Court of North Carolina has held that it did free the General Assembly to adopt Section 163-28 of the General Statutes of North Carolina in 1957. It did so by doing away with any basis for supposing that the invalidity of Article VI, as readopted by the Amendment of 1945, would have the effect of restoring the provisions of Article VI as that article appeared in the Constitution of 1868, as amended in 1875. Louise Lassiter v. Northampton County Board of Elections, 248 N. C. 102, 102 S. E. (2d) 853 (1958). The decision of the Supreme Court of North Carolina as to this effect of the Amendment of 1945 is conclusive.

III. The literacy test imposed by the statute of North Carolina as a qualification for registration as a voter does not conflict with the Fourteenth Amendment. It does not deprive the appellant of liberty without due process of law. It is a reasonable test, having a reasonable relation to the legitimate

public interest of protecting the people of the State from bad government. It provides a definite, uniform standard since it requires every applicant to be able to read and write any section of the Constitution of North Carolina. It does not require any applicant to understand or explain any such section. It does not permit the registrar to select from any other source the test material for determining whether an applicant can read and write. Since it does not require that the reading and writing be "to the satisfaction of the registrar", it does not permit the registrar to exercise any arbitrary discretion in holding one applicant eligible and another ineligible for registration.

The requirements of procedural due process are met in that the statute provides for successive appeals from the registrar to the board of elections and from the board to the Superior Court, the applicant being given a *de novo* hearing on each of these appeals. An appeal to the State Supreme Court from the Superior Court is allowed on questions of law. The applicant had a right to a jury trial in the Superior Court, but waived that right and elected to have her eligibility for registration determined by the Judge upon the agreed statement of facts set forth in the record. (R. 6-10).

The appellant stipulates that she cannot read and write the section of the Constitution of North Carolina designated by the registrar, the section designated by the defendant board of elections, or any other section in the Constitution. (R. 9, paragraph 19). In Lassiter v. Taylor, supra, the Three-Judge District Court found that the registrar had adequate basis for denying registration to the appellant if the literacy test is valid, and further found that the literacy test was applied by the registrar to white persons and Negroes alike without discrimination.

For a state to make a classification between literate and illiterate persons and to deny illiterate persons registration as voters, does not deny to such illiterate persons, the equal protection of the laws, the classification being clear and having a reasonable relation to a legitimate public interest designed

to be protected by the Statute. The statute exempts no applicant for registration from the literacy test. The provision of the State Constitution which attempted to do so is void. Everyone must register in order to vote. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905).

The privilege of suffrage is not one of the privileges or immunities protected by the Fourteenth Amendment to the Constitution of the United States.

IV. The Fifteenth Amendment has no application to this case because the appellant was not denied registration as a voter by reason of her race, color, or previous condition of servitude, but was denied such registration solely because of her inability to pass and her refusal to attempt to pass the literacy test imposed by the statute.

V. The Seventeenth Amendment to the Constitution of the United States does not prevent a state from imposing a literacy test as a condition to the right to register as a voter and has no application to this appeal.

Therefore, the decision of the Supreme Court of North Carolina should be affirmed.

ARGUMENT

I

SECTION 163-28 OF THE GENERAL STATUTES OF NORTH CAROLINA IS THE ONLY STATUTE INVOLVED IN THIS APPEAL.

The appellant, throughout her brief, including her statement therein of the questions presented by her appeal, (Appellant's Brief, pages 11 to 14) undertakes to argue the unconstitutionality of certain alleged statutes of North Carolina which she identifies only as "North Carolina General Statutes 163-28 *et seq*".

Never, prior to the filing of her brief, has the appellant raised before the registrar, the defendant board, the Superior Court, or the Supreme Court of North Carolina, the slightest question of any statute of North Carolina except General Statutes 163-28. (See, R. 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 23, 24, 25 and 33). The Supreme Court of North Carolina was not asked to pass upon the validity or the meaning of any other statute of the state, and did not. (Opinion of the Supreme Court of North Carolina, R. 19 to 33).

The appellant cannot in her brief on appeal to this Court inject, for the first time, other statutes, even if such statutes be in existence. Certainly, she cannot rely upon the alleged unconstitutionality of a statute which was repealed before she made the application for registration out of which this appeal arises.

On page 10 of her brief, the appellant asserts that Section 163-32 of the General Statutes of North Carolina "is still a part of the statutory law of North Carolina". Apparently, this is one of the sections she intends to include in her sweeping, broadside "163-28 et seq." If there were no other objection to her present attempt to inject this old statute into this appeal, the sufficient answer is that there is no such statute and has not been since April 12, 1957, a date prior to the appellant's at-

tempt to register as a voter. Prior to that date there was such a statute enacted in 1901, as a companion to the old Section 163-28, which contained a "Grandfather Clause". This Section 163-32 provided for registration, prior to December 1, 1908, of voters claiming to be entitled to registration under the "Grandfather Clause" of the Constitution as amended in 1902, and the old Section 163-28, but, like that section, Section 163-32 was repealed by the Act of April 12, 1957, and, contrary to the appellant's assertion in her brief, is not now "a part of the statutory law of North Carolina."

The Act of April 12, 1957, (Appendix A hereto) provides:

> "Section 1. Article 6, Chapter 163 of the General Statutes, is hereby amended by rewriting G. S. 163-28, to read as follows:
>
> 'Every person presenting himself for registration shall be able to read and write any Section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this Section.'
>
> (Sections 2, 3 and 4 then provide the procedure for successive appeals from the registrar to the board, from the board to the Superior Court, and from that court to the Supreme Court of North Carolina, the procedures followed in this instance by the appellant.)
>
> "Section 5. All laws and clauses of laws in conflict with this Act are hereby repealed." (Session Laws of North Carolina, Regular Session 1957, Chapter 287, p. 277).

As the Three-Judge Court said in this appellant's suit against the registrar (R. 17), the former Section 163-28 "with its 'grandfather clause' . . . has been superseded by the Act of March 29, 1957 (ratified April 12, 1957), which contains neither of these provisions."

In the opinion from which this appeal is taken, the Supreme Court of North Carolina recognizes the invalidity of the old, repealed "Grandfather Clause" through its quotation from

inn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 40 (1914). It then turned to what this Court, in the Guinn se, said "is really a question of State law"; i.e., whether e literacy test was intended to remain in the law with the valid "Grandfather Clause" eliminated. It then said (R. 33):

> *"In this respect* (i.e., without a Grandfather Clause), the statute (the old Section 163-28, containing such a clause on its face) was the subject of judicial interpretation by this Court, in the case of Allison v. Sharp, 209 N. C. 477, 184 S. E. 27, decided 26 February, 1936. And the Court, in opinion by Clarkson, J., held it to be constitutional." (Emphasis added).

That is; the Supreme Court of North Carolina, in the opinion om which this appeal is taken, has said that for over twenty ears, it has recognized the invalidity of the Grandfather lause, which, of course, carried with it into oblivion the echanics provided in 1901 for registration pursuant to it. ven if this were not so, the provisions of Section 163-32, hich the appellant's brief now, for the first time, seeks to ject into this case, certainly were eliminated by the ratifiation of the present statute on April 12, 1957.

Therefore, the only statute of North Carolina involved in his appeal is the present Section 163-28 of the General Statutes, above quoted.

II

ARTICLE VI, SECTION 4, OF THE CONSTITUTION OF NORTH CAROLINA HAS NO BEARING UPON THIS APPEAL.

As the Three-Judge District Court said in Lassiter v. Taylor, 152 F. Supp. 295 (E.D.N.C., 1957), Article VI, Section 4, of the Constitution of North Carolina is void, being violative of the provisions of the Fifteenth Amendment to the Constitution of the United States. However, as the Supreme Court of North Carolina has held in the opinion from which this appeal is taken, (R. 32) the nullity of Article VI, Section 4, does not

impair the validity of Section 163-28 of the General Statutes since the General Assembly has power to enact any legislation as to which there is no constitutional prohibition. Whether there was on April 12, 1957, any provision in the Constitution of North Carolina which deprived the General Assembly of the power to enact the present Section 163-28 of the General Statutes is, of course, a question of state law on which the decision of the Supreme Court of North Carolina is conclusive. Moreover, the history of Article VI of the Constitution of the State, on which its conclusion was reached, shows the conclusion to be sound:

Prior to July 1, 1902, the Constitution of North Carolina provided certain qualifications for voting, but these did not include a literacy test. (Constitution of 1868, as amended by the Constitutional Convention of 1875, Article VI, Section 1). An Amendment, to be effective July 1, 1902, if approved by the voters, was submitted to the vote of the people of the State by an Act of the General Assembly (Chapter 2 of the Adjourned Session of 1900), which Act provided:

> "That Article Six of the Constitution of North Carolina be and the same is hereby abrogated, and in lieu thereof shall be substituted the following Article of said Constitution, as an entire and indivisible plan of suffrage."

The Act then set forth a wholly new Article VI, (quoted in full, R. 27-28) which provided in Section 4, "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." This provision was followed in the same section by the "Grandfather Clause". The amendment, which was approved by the vote of the people, then provided in Section 5, "That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together."

The "Grandfather Clause" being invalid under the subsequent decision of this Court in Guinn v. United States, 238

U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914), and the new Article VI expressly providing that it was one indivisible plan and the whole of it should stand or fall together, the whole new Article VI fell, but in its fall, it did not cause the former provision of the Constitution of 1868, as amended in 1875, to rise to new life.

This amendment of 1902 did two things: (1) it "abrogated" Article VI of the Constitution of 1868, as amended in 1875; (2) It put into the Constitution a new Article VI. These two were separate and distinct. That which was "entire and indivisible" was the new Article VI. It being indivisible and the "Grandfather Clause" being in conflict with the Fifteenth Amendment, the entire new Article VI fell. The old Article VI having been "abrogated" by the proper amending procedure—submission to the vote of the people by the General Assembly, and approval by the vote of the people—the Constitution of North Carolina simply contained no valid Article VI after July 1, 1902.

This being true, the Constitution of North Carolina was, in effect, silent on the subject of qualifications of voters. Consequently, the North Carolina rule that the General Assembly is without power to add to the qualifications imposed by the Constitution of the State (State v. Scarboro, 110 N. C. 232, 14 S. E. 737 (1892) has no application.

The new Article VI, so approved by the vote of the people, was, of course, printed in and as part of all subsequent printings of the Constitution of North Carolina. Even after the decision in Guinn v. United States, supra, it is quite clear that North Carolina did not regard the old Article VI of the Constitution of 1875 as having any effect. It was recognized as dead. This is clearly shown by the adoption in 1920, pursuant to the proper amending procedures, of an amendment to eliminate the payment of poll tax as a qualification for voting, a qualification not in the Article VI of 1868 and 1875. (Opinion of the Supreme Court of North Carolina, R. 29). The new Article VI was further amended in 1945 and again in 1954.

The 1945 Amendment changed Article VI, Section 1, to read as follows:

> "Every person born in the United States, and every person who has been naturalized, twenty-one years of age, *and possessing the qualifications set out in this Article*, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided." (Emphasis added).

The Act submitting it to the vote of the people expressly repealed all laws and clauses of laws in conflict with its provisions. (R. 30).

With the above mentioned changes, Article VI as it now appears in the Constitution of North Carolina, (Appendix B hereto) reads as it read following the Amendment of 1902, including the literacy test and the "Grandfather Clause" exception thereto, and also including Section 5, which still provides:

> "That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and make them so dependent upon each other, that the whole shall stand or fall together."

In the opinion from which this appeal is taken, the Supreme Court of North Carolina (R. 32) held that the adoption of the 1945 Amendment had the effect of "incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 Amendment."

By so holding, the Supreme Court of North Carolina was not saying, as the appellant contends in her brief, that the voters of North Carolina in 1945 made valid the Grandfather Clause of Article VI, Section 4. That they could not do in view of the Fifteenth Amendment. What the Court has now said is that even if the appellee board is not correct in its position, above stated, that the 1902 Amendment "abrogated" the old Article VI which appeared in the Constitution of 1868, as

amended in 1875, the 1945 Amendment did so abrogate it. (R. 31, 32) for in 1945, the State clearly proceeded on the basis that the old Article VI of 1868 and 1875 was already dead. There is nothing in the Act of the General Assembly submitting the 1945 Amendment, or in the vote of the people approving it, making the validity of the present Article VI a condition precedent to the abrogation of the Article VI of 1868 and 1875.

Whether the abrogation of a former provision of a state's Constitution is or is not contingent upon the validity of a new provision which the people of the state have sought to put in its place, is clearly a matter of the law of that state and is not a federal question. On that question, the decision of the Supreme Court of North Carolina is final and is not subject to review by this Court.

Elmendorf v. Taylor, 10 Wheat. 152, 159, 6 L. Ed. 289 (1825);

Green v. Neal's Lessee, 6 Pet. 291, 298, 8 L. Ed. 402 (1832);

State Railroad Tax Cases, 92 U. S. 575, 618, 23 L. Ed. 663 (1875);

Pelton v. Bank, 101 U. S. 143, 25 L. Ed. 901 (1879);

Moores v. Bank, 104 U. S. 625, 26 L. Ed. 870 (1881);

New Orleans Waterworks Co. v. Louisiana Sugar Refining Co., 125 U. S. 18, 8 S. Ct. 741, 31 L. Ed. 607 (1888);

In re Kemmler, 136 U. S. 436, 447, 10 S. Ct. 930, 34 L. Ed. 519 (1889);

Stutsman Co. v. Wallace, 142 U. S. 293, 12 S. Ct. 227, 35 L. Ed. 1018 (1892);

McPherson v. Blacker, 146 U. S. 1, 23, 13 S. Ct. 3, 36 L. Ed. 869 (1892);

Bauserman v. Blunt, 147 U. S. 647, 13 S. Ct. 466, 37 L. Ed. 316 (1892);

Minnesota ex rel. Pearson v. Probate Court of Ramsey County, 309 U. S. 270, 60 S. Ct. 525, 84 L. Ed. 744, 126 A. L. R. 530 (1940);

Wilson v. Cook, 327 U. S. 474, 485, 66 S. Ct. 663, 90 L. Ed. 793 (1946).

This Article VI, as so readopted in 1945, contains in Section 4 precisely the same literacy test prescribed by Section 163-28 of the General Statutes, but, unlike the statute, Article VI, Section 4, also contains a "Grandfather Clause" which is in conflict with the Fifteenth Amendment to the Constitution of the United States. Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914).

The Supreme Court of North Carolina has said of this readopted Article (R. 32):

> "The 1945 amendment so proposed and later adopted had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act."

If the Court meant by this language that, by reason of the Amendment of 1945, Section 5 of Article VI no longer applies and the various provisions of Article VI, itself, are separable and independent of each other, then the invalidity of the "Grandfather Clause" does not impair the remainder of Article VI, and there is now in the Constitution of North Carolina an Article VI imposing precisely the same literacy test as that imposed by Section 163-28 of the General Statutes. As this Court said in Guinn v. United States, supra, this is a question of state law which this Court will consider only in absence of a decision by the Supreme Court of the State.

If by this sentence the Supreme Court of North Carolina

meant only that the 1945 Amendment freed the abrogation of the Article VI of the Constitution of 1868, as amended in 1875, from any connection with the validity of the new Article VI, then the present Article VI is, within itself, an indivisible whole and the invalidity of the "Grandfather Clause" invalidates the entire Article VI. If this view be taken of the decision of the North Carolina Court, there is at this time no provision at all in the North Carolina Constitution concerning suffrage. In this situation the General Assembly of 1957 was free to adopt Section 163-28 of the General Statutes, containing the present literacy test with no "Grandfather Clause".

In either view of its opinion, the Supreme Court of North Carolina was correct in saying, "The way was made clear for the General Assembly to act." (R. 32). On this, its decision is final. The only question for decision on this appeal is as to the validity of the provision of Section 163-28 of the General Statutes under the Fourteenth, Fifteenth and Seventeenth Amendments to the Constitution of the United States.

III

THE NORTH CAROLINA STATUTE DOES NOT CONFLICT WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(a) *Section 2 of the Amendment.*

The appellant's statement of the questions presented by her appeal, both in the record (R.p. 37, 38) and in her brief indicate that she does not rely upon Section 2 of Amendment XIV. In any event, this provision of the Amendment, even as supplemented by Amendment XIX, does not confer upon the appellant the right to be registered as a voter.

McPherson v. Blacker, 146 U. S. 1, 39, 13 S. Ct. 3, 36 L. E. 869 (1892).

The Fourteenth Amendment did not confer the right of suffrage, nor did it forbid the states to qualify, limit or with-

hold such right. So long as such qualification, limitation or withholding does not violate the Due Process Clause or the Equal Protection Clause, the Fourteenth Amendment is not concerned with it.

Minor v. Happerstett, 88 U. S. 162, 22 L. Ed. 627 (1874);

Breedlove v. Suttles, 302 U. S. 277, 59 S. Ct. 872, 82 L. Ed. 1281 (1937);

See also, Trudeau v. Barnes, 65 F. (2d) 563, cert. den., 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (5th Circuit, 1933);

Davis v. Schnell, 81 F. Supp. 872, aff'd, 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093 (S. D. Ala., 1949).

(b) *The Due Process Clause,*

The North Carolina statute clearly does not deprive the appellant of procedural due process of law.

In her brief, the appellant takes the strange position that the North Carolina statutory procedure is arbitrary because it gives the applicant for registration the right to successive appeals from the registrar to the board of elections, from the board to the Superior Court of her county, and from the Superior Court to the Supreme Court of the State. (Sections 163-28.1, 163-28.2, and 163-28.3 of the General Statutes of North Carolina, Appendix A hereto).

These statutory provisions are obviously designed to protect the applicant against any possibility of arbitrary denial of registration. Considered as a whole, they give the applicant three independent opportunities to establish her eligibility for registration, the hearings before the board and before the Superior Court being *de novo*. Thus, she is protected by the statute against any possibility of arbitrariness on the part of the registrar, or even the defendant board, in her or its decision as to the applicant's ability to read and write. This is a procedural implementation of the removal by the Legislature

from the statute of the former provision that the reading and writing be "to the satisfaction of the registrar."

The appellant's contention in her brief that the statute is arbitrary because it gives her the right to a trial by jury in the Superior Court is, indeed, novel. Probably this is the first time that it has ever been contended that to give a litigant the right to trial by jury is a denial of due process of law. A sufficient answer in this case, in any event, is that the appellant was permitted in the Superior Court to waive her right to trial by jury and to have her right determined by the Court upon her own agreed stipulation as to the facts. (R. 6). Furthermore, the guaranty of a trial by jury in such a case was said by the Circuit Court of the Fifth Circuit to be an assurance that the applicant was protected against arbitrary rejection, the Court saying:

> "The Louisiana Constitution protects every citizen who desires to register from being arbitrarily denied that right by the registrar of voters by the giving the applicant a right to apply without delay and without expense to himself to the trial court, to submit his qualifications to vote to a jury, and to have them finally passed upon by an appellate court. It is idle to say that the defendant as registrar had the arbitrary power to deny the plaintiff the right to vote."

Trudeau v. Barnes, 65 F. (2d) 563, cert. den., 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (5th Circuit, 1933).

It is not a denial of substantive due process of law for a state to limit the suffrage to those who can read and write. In Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914), this Court said:

> "No time need be spent on the question of the validity of the literacy test considered alone, since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed its validity is admitted."

In Trudeau v. Barnes, supra, the Court sustained the pro-

vision of the Louisiana Constitution requiring an applicant for registration to be able "to read any clause in this Constitution, or the Constitution of the United States and give a reasonable interpretation thereof." The Circuit Court said: "It is difficult to conceive how this clause can be said to violate either the Fourteenth or Fifteenth Amendment." This Court denied certiorari.

In Davis v. Schnell, 81 F. Supp. 872, (S. D. Ala., 1949), a Three-Judge District Court said: "The States have a right to prescribe a literacy test for electors." It further stated that the original Constitution of Alabama had provided "definite standards for passing upon the qualifications of prospective electors." By that original provision, an applicant was required to be able to "read and write any article of the Constitution of the United States in the English language." Thus the test there said to be definite, and within the power of the state to prescribe, was exactly the same as the test prescribed by the North Carolina statute here under discussion, except it is the State Constitution which is the source of the material to be read and written in North Carolina.

The Court in Davis v. Schnell, supra, then held that the amended Alabama test prescribed by the Boswell Amendment, fell before the Fourteenth Amendment because that new test required the applicant to "understand and explain" as well as "read and write", any article of the Constitution of the United States. This added requirement, the Court said, subjected the applicant to the possibility of arbitrary denial by the registrar since the words "understand and explain" as applied to a constitutional provision do not furnish a definite standard. The North Carolina statute here attacked by the appellant does not require the applicant for registration to understand or explain anything. It merely requires her to read and write.

The North Carolina statute does not leave the registrar, or on appeal the board or the Superior Court, free to roam at large in the selection of the material which the applicant is to read and write. The material must be selected from some

section of the North Carolina Constitution. If a literacy test is to be something more than a farce, the examiner must be allowed some selection of the words to be read. Otherwise, the purpose of the test could be evaded. Limiting the examiner to a selection of some section of the North Carolina Constitution enables the examiner to determine whether the applicant can read and write as distinguished from the applicant's ability to memorize a predetermined short passage. At the same time, it protects the applicant from the possibility of being required to read from a publication using terms of great difficulty, while another applicant is permitted to register upon reading from a book of children's nursery rhymes. The North Carolina statute, therefore, requires that all applicants be required to read and write test material taken from a source sufficiently extensive to provide a real test and at the same time of such relative uniformity of language that one applicant cannot be given a test more difficult than that imposed upon another. It would be difficult to find a more definite standard than that prescribed by the North Carolina statute in its designation of the source of the test material.

The North Carolina statute does not subject the applicant to the personal whim of the registrar since there is no requirement that the material be read to "the satisfaction of the registrar", or that the applicant explain the test material. It, therefore, does not impose a test of the type held invalid in Davis v. Schneli, supra, but falls within the class of literacy tests said by that case to be within the power of the state.

In Franklin v. Harper, 205 Ga. 779, 55 S. E. (2d) 221 (1949), the Court held a state requirement that an applicant for registration be able to "read intelligibly" a specified paragraph of the Constitution of Georgia does not deprive the applicant of liberty without due process of law in violation of the Fourteenth Amendment. An appeal to this Court was dismissed.

Franklin v. Harper, 339 U. S. 946, 70 S. Ct. 804, 94 L. Ed. 1361 (1949).

If the privilege of voting is a liberty, within the meaning of

the Due Process Clause, it is not every denial of that liberty which is beyond state power. The denial is not forbidden if the public welfare affords a reasonable basis for it. It is sufficient that reasonable men might conclude that the protection of the public against bad government outweighs the denial to the individual of the right to vote.

Thus, while the Due Process Clause protects the liberties of all persons, the right to vote is everywhere limited to citizens. It is limited to citizens of a certain age, because of the danger to the public in permitting children to participate in the choice of public officers or in fixing public policies. Until the adoption of the Nineteenth Amendment, women could be denied the right to vote notwithstanding the Fourteenth Amendment. Minor v. Happerstett, supra. Notwithstanding the Due Process Clause of the Fifth Amendment and the provisions of the First Amendment, this Court sustained a law of Idaho Territory denying the right to vote to members of the Mormon Church because that Church then taught and encouraged polygamy. Davis v. Beeson, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890). The right to vote can be, and usually is, denied one who has been convicted of a felony or other serious crime, the reason being that to permit such a person to participate in the choice of public officials or in the determination of public policy would endanger the public interest in good government to a degree which outweighs the deprivation to the individual.

Surely, the inability of a would be voter to read and write the English language has a relation to the protection of the public against bad government sufficient to outweigh the illiterate individual's interest in being able to vote. That being true, the denial to such a person of the right to vote, even if that be a "liberty" is not a denial without due process of law.

(c) *The Equal Protection Clause.*

The classification made by the North Carolina statute is clear and definite. It is a classification between the literate and the illiterate. It is this classification which the appellant

asserts is a violation of the Equal Protection Clause of the Fourteenth Amendment. (See, Question (b), Appellant's Brief, p. 13).

In Barbier v. Connolly, 113 U. S. 27, 32, 5 S. Ct. 357, 28 L. Ed. 923 (1885), this Court said:

> "Legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

The North Carolina statute applies to all applicants for registration. It grants no exemptions. It has a reasonable relation to the protection of the public against bad government.

Even before the decision in Guinn v. United States, supra, when the "Grandfather Clause" was regarded as part of the State Constitution, the Supreme Court of North Carolina, held that persons who met the terms of that clause must register in order to vote and must reregister from time to time, as new registrations might be required, the permanency being not a permanency of registration but a permanency, so long as the "Grandfather Clause" was effective, of exemption from the literacy test. Clark v. Statesville, 139 N. C. 490, 52 S. E. 52 (1905). Now that the invalidity of the "Grandfather Clause" is established by this Court's decision in Guinn v. United States, supra, the exemption from the literacy test is gone and every person who desires to vote in North Carolina must register, which he can do only if he passes the literacy test.

That there is no basis for the application of the rule of Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886), through any defect in the administration of the statute by the defendant, or its registrar, is shown in the following language of the Three-Judge District Court in this appellant's own action against the registrar:

> "At the hearing, it was shown, without contradiction, that the literacy test was applied by the Registrar to white persons and Negroes alike without discrimination;

> and the cross examination of the three Negro women who were denied registration by the Registrar amply established adequate basis for the denial if the literacy test is valid. The contention of counsel for plaintiffs on the record made at the hearing, as we understand it, is not that the literacy test was discriminatingly applied against their clients, but that it is inherently void."
>
> Lassiter, et al. v. Taylor, Registrar, 152 F. Supp. 295 (E. D. N. C., 1957).

In United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875), this Court recognized that the Fourteenth Amendment does not deprive the states of the power to exclude citizens of the United States from voting on the basis of their lack of education.

In Trudeau v. Barnes, supra, a literacy test more stringent that that in the North Carolina statute, since it required the applicant to give a reasonable interpretation of a clause in the Constitution of Louisiana, was held valid, the Circuit Court saying:

> "It is at once apparent that the clause of the State Constitution which is under attack applies to all voters alike, denies to none of them the equal protection of the laws. . . . It is difficult to conceive how this clause can be said to violate either the Fourteenth or Fifteenth Amendment. It lays down but one test, that of intelligence, which applies uniformly and without discrimination to voters of every race and color."

This Court denied certiorari. Trudeau v. Barnes, 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (1933).

In Davis v. Schnell, 81 F. Supp. 872 (S. D. Ala., 1949), the provision in the Alabama Constitution which was held to be a violation of the Equal Protection Clause, was not the requirement that an applicant be able to read and write. The Court expressly said, "The States have a right to prescribe a literacy test for electors." The defect there was in the requirement that the applicant "understand and explain" the

constitutional provision selected by the registrar. This requirement was thought so vague as to arm the registrar with arbitrary power to deny some applicants, while registering others no better qualified, thus bringing the Alabama law within the condemnation of the rule of Yick Wo v. Hopkins, supra. This Court affirmed the decision of the District Court. Davis v. Schnell, 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093 (1949).

In the opinion from which this appeal is taken, the Supreme Court of North Carolina said:

> "The provisions of G. S. 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of, or against, any by reason of race, creed or color." (R. 33).

The appellant has been properly classified by the defendant. She has stipulated (R. 9) that she "because of her lack of educational qualifications . . . is unable to . . . write or read . . . any section of the Constitution of North Carolina, or any section of the Constitution of the United States in the English language." She has further stipulated that this was the ground upon which both the registrar and the defendant board refused to register her. (R. 8. 9).

(d) *The Privileges and Immunities Clause.*

It has been repeatedly held by this Court and by the lower federal courts that the Fourteenth Amendment did not confer upon anyone the right to vote and that the privilege of voting is not one of the privileges and immunities of citizens of the United States.

Minor v. Happerstett, 88 U. S. 162, 22 L. Ed. 627 (1874);

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875);

United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 888 (1875);

Pope v. Williams, 193 U. S. 621, 24 S. Ct. 573, 48 L. Ed. 817 (1903);

Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914);

Breedlove v. Suttles, 302 U. S. 277, 59 S. Ct. 872, 82 L. Ed. 1281 (1937);

Trudeau v. Barnes, 65 F. (2d) 563, cert. den., 290 U. S. 659, 54 S. Ct. 74, 78 L. Ed. 571 (1933);

Pirtle v. Brown, 188 F. (2d) 218, cert. den., 314 U. S. 621, 62 S. Ct. 64, 86 L. Ed. 499 (1941);

Davis v. Schnell, 81 F. Supp. 872, aff'd, 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093 (1949);

Davis v. Teague, 220 Ala. 309, 125 So. 51 appeal dismissed, 281 U. S. 695, 50 S. Ct. 248, 74 L. Ed. 1123 (1929);

Franklin v. Harper, 205 Ga. 779, 55 S. E. (2d) 221, appeal dismissed, 339 U. S. 946, 70 S. Ct. 804, 94 L. Ed. 1361 (1949);

Tedesco v. Board of Supervisors of Elections for Parish of Orleans, 43 So. (2d) 514 (La.), appeal dismissed, 339 U. S. 940, 70 S. Ct. 797, 94 L. Ed. 1357 (1949).

As this Court pointed out in Minor v. Happerstett, supra, the adoption of the Fifteenth Amendment, itself, shows this to be true, for if suffrage were a privilege or immunity derived from United States citizenship and protected from state abridgement by the Fourteenth Amendment, there would have been no necessity for a further amendment forbidding the states to deny or abridge the right to vote on account of race, color, or previous condition of servitude.

The privilege or immunity conferred upon the appellant by the Fourteenth Amendment is not the privilege to vote, but the privilege not to be deprived without due process of law, or in contravention of the Equal Protection Clause, of a right to vote otherwise established under state law. The Fifteenth Amendment added the privilege not to be denied

he right to vote on account of race, color or previous condition f servitude, but it went no further than that. The Nineteenth mendment added the privilege not to be denied the right o vote on account of sex, but it went no further than that. hus, the Fourteenth Amendment leaves to the states the ower to impose any qualification upon the right to vote ther than sex, race, color, previous condition of servitude, or qualification which, having no reasonable relation to the rotection of the public from bad government, deprives the laintiff of a liberty without due process of law, or places her n a classification which is arbitrarily made. Since the imposi- ion of a reasonable literacy test does none of these things, he North Carolina statute does not deprive the plaintiff of ny privilege or immunity guaranteed by the Fourteenth Amendment.

IV

THE NORTH CAROLINA STATUTE DOES NOT VIOLATE THE FIFTEENTH AMENDMENT.

The statute makes no reference to race, color or previous condition of servitude. In this appellant's suit against the registrar, the District Court found that the literacy test is applied by the registrar to white persons and Negroes alike, without discrimination.

Lassiter v. Taylor, Registrar, 152 F. Supp. 295 (E. D. N. C., 1957).

The statute contains no exceptions or exemptions from the literacy test. The act by which it was adopted (Appendix A hereto) repealed all laws and clauses of laws in conflict with it. The Grandfather Clause written into Article VI, Section 4 of the Constitution of North Carolina, in 1902, and readopted by reference by the amendment of 1945, as stated by the Supreme Court of North Carolina in the opinion from which this appeal is taken, was and is void and of no effect. There is no law of North Carolina which denies any person the right to register on account of race, color, or previous condition of servitude. There is no law of North Carolina which grants any

person the privilege of registration as a voter without compliance with the same literacy test required of this appellant.

In United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875) this Court said, "The Fifteenth Amendment does not confer the right of suffrage upon anyone."

In Guinn v. United States, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340 (1914), this Court said:

> "Beyond doubt, the Amendment (the Fifteenth) does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of state and national authority under the constitution and organization of both governments rest would be without support and both the authority of the nation and the state would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals."

Since there has been no denial of the plaintiff's application to register because of her race, color, or previous condition of servitude, there has been no violation of the Fifteenth Amendment either in the adoption of this statute or in the administration of it by the defendant board or its registrar.

V

THE NORTH CAROLINA STATUTE DOES NOT VIOLATE THE SEVENTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Seventeenth Amendment provides:

> "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

The remainder of the Amendment simply relates to the filling of vacancies and to the continuation of the term of any senator chosen before the Amendment became effective.

Obviously, the words "elected by the people thereof" were simply a substitute for the words "chosen by the legislature thereof" found in Article I, Section 3. Clearly, it was not intended by these words to confer upon all people the right to vote for senators regardless of citizenship, age, previous criminal record, payment of poll tax, educational qualifications, or any other of the various qualifications theretofore imposed by their states and recognized as valid by this court.

In passing, it may be noted that the election for which the appellant sought to be registered was not an election at which a United States Senator was to be chosen but was "a special election scheduled to be held on July 13, 1957, for the voting citizens of Northampton County." (R. 7, Stipulation 6).

CONCLUSION

Since Section 163-28 of the General Statutes of North Carolina imposes as a condition precedent to registration as a voter, the valid, nondiscriminatory and reasonable literacy test, which test the District Court for the Eastern District of North Carolina has found to be applied without discrimination to white and Negro people alike; since it is stipulated by the appellant that she cannot pass such test and does not have the qualification for registration specified by the statute; and since the statute applies alike to all applicants for registration, the appellant has not been deprived of any right; privilege or immunity arising under or conferred upon her by the Constitution of the United States. The decision of the Supreme Court of North Carolina should, therefore, be affirmed.

Respectfully submitted,

I. BEVERLY LAKE,

Counsel for the Appellee

APPENDIX — A

ACT OF APRIL 12, 1957

CHAPTER 287

AN ACT TO AMEND ARTICLE 6, CHAPTER 163, OF THE GENERAL STATUTES RELATING TO REGISTRATION OF VOTERS.

THE GENERAL ASSEMBLY OF NORTH CAROLINA DO ENACT:

Section 1. Article 6, Chapter 163 of the General Statutes, is hereby amended by rewriting G. S. 163-28, to read as follows:

"Every person presenting himself for registration shall be able to read and write any Section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this Section."

Sec. 2. Article 6, Chapter 163 of the General Statutes, is further amended by inserting a new Section, G. S. 163-28.1, to read as follows:

"Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections of the county in which the precinct is located. Notice of appeal shall be filed with the registrar who denied registration, on the day of denial or by 5:00 P.M. on the day following the day of denial. The notice of appeal shall be in writing, signed by the appealing party, and shall set forth the name, age, and address of the appealing party, and shall state the reasons for appeal."

Sec. 3. Article 6, Chapter 163 of the General Statutes, is further amended by inserting a new Section, G. S. 163-28.2, to read as follows:

"Every registrar receiving a notice of appeal shall promptly file such notice with the county board of elec-

tions, and every person appealing to the county board of elections shall be entitled to a prompt and fair hearing on the question of such person's right and qualifications to register as a voter. A majority of the county board of elections shall be a quorum for the purpose of hearing appeals on the question of registration, and the decision of a majority of the members of the board shall be the decision of the board. All cases on appeal to a county board of elections shall be heard de novo, and the board is authorized to subpoena witnesses and to compel their attendance and testimony under oath, and is further authorized to subpoena papers and documents relevant to any matter pending before the board. If at the hearing the board shall find that the person appealing from the decision of the registrar is able to read and write any Section of the Constitution of North Carolina in the English language and if the board further finds that such person meets all other requirements of law for registration as a voter in the precinct to which application was made, the board shall enter an order directing that such person be registered as a voter in the precinct from which the appeal was taken. The county board of elections shall not be authorized to order registration in any precinct other than the one from which an appeal has been taken. Each appealing party shall be notified of the board's decision in his case not later than ten (10) days after the hearing before the board."

Sec. 4. Article 6, Chapter 163 of the General Statutes, is further amended by inserting a new Section, G. S. 163-28.3, to read as follows:

"Any person aggrieved by a final order of a county board of elections may at any time within ten days from the date of such order appeal therefrom to the Superior Court of the County in which the board is located. Upon such appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the Superior Court in the same manner as other civil actions are tried and disposed of therein. If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that such person is entitled to be registered as a qualified voter in the precinct to which application was originally made, and in such case the name of such person shall be entered on the registration books of

that precinct. The court shall not be authorized to order the registration of any person in a precinct to which application was not made prior to the proceeding in court. From the judgment of the Superior Court an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions."

Sec. 5. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 6. This Act shall be effective upon its ratification.

In the General Assembly read three times and ratified, this the 12th day of April, 1957.

APPENDIX — B

CONSTITUTION OF NORTH CAROLINA

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. (The 19th amendment to the United States Constitution, ratified Aug. 6, 1920, provided that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex." North Carolina accordingly by c. 18, Extra Session 1920, provided for the registration and voting of women.)

Sec. 2 *Qualifications of voter.* Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this Article, shall be entitled to vote at any election held in this State; provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote unless the said person shall be first restored to citizenship in the manner prescribed by law.

Sec. 3. *Voters to be registered.* Every person offering to vote shall be at the time a legally registered voter as herein pre-

scribed and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article.

Sec. 4. *Qualification for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: *Provided*, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration; and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article.

Sec. 5. *Indivisible plan; legislative intent.* That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and make them so dependent upon each other, that the whole shall stand or fall together.

Sec. 6. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and all elections by the General Assembly shall be *viva voce*.

Sec. 7. *Eligibility to office; official oath.* Every voter in North Carolina except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office, he shall take and subscribe the following oath:

I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ..... So help me, God."

Sec. 8. *Disqualification for office*: The following classes of persons shall be disqualified for office: *first*, all persons who shall deny the being of Almighty God. *Second*, all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

Sec. 9. *When this chapter operative*. That this amendment to the Constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER,

Appellant,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

APPELLANT'S REPLY BRIEF

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Appellant herein files the Reply Brief in this cause as a response to the Brief of Appellee and to the Brief of the Attorney General of North Carolina Amicus Curiae.

I

The Briefs of the Appellee and of the Attorney General of North Carolina Amicus Curiae Have Totally Failed to Take Issue Upon the Racial and Preferential Grant and Exercise of the Franchise in North Carolina and Have Attempted to Obscure the Fact of This Racial and Preferential Grant and Exercise of the Franchise by Focusing Attention Upon the "Illusion of Equality" of Present Registration Laws.

The Appellee Board of Elections and the Attorney General of North Carolina in his Brief Amicus Curiae have entrenched in the erroneous and untenable positions: (1) that appellant may not complain of the preferential grant of the franchise to "grandfather electors" because of the circumstance that the time for registering as "grandfather electors" has lapsed; (2) that appellant may not complain of the "grandfather clause" in the State Constitution (Article VI, Section 4, Constitution of North Carolina) because of the invalidity of the "grandfather proviso." See ARGUMENT II, Brief of Appellee, pages 11 to 17; ARGUMENT IIB, Brief Amicus Curiae of the Attorney General of North Carolina, pages 18 to 19. The Brief of Appellee gratuitously allows the following:

> "That is, the Supreme Court of North Carolina, in the opinion from which this appeal is taken, has said that for over twenty years, it has recognized the invalidity of the Grandfather Clause, which, of course, carried with it into oblivion the mechanics provided in 1901 for registration to it" (Appellee's Brief, page 11).

While the Attorney General of North Carolina, in reference to the opinion of the State Supreme Court in *Allison* v. *Sharp*, 209 N.C. 477, 184 S.E. 27 (which was cited approv-

ingly in the opinion from which this appeal is taken), assessed the State Supreme Court's position as follows:

> "In other words, the Supreme Court of North Carolina thought that because of the passage of time the effectiveness of this clause had expired and had become quiescent. This is especially true because of the great advance of Negro education in the State of North Carolina, their high rate of attendance in the public schools and the high rate of literacy" (Brief of the State Attorney General, page 19).

But the Supreme Court of North Carolina has spoken for itself. In the opinion below, in clear and lucid language, the State Supreme Court has held that by the convenience of "revival," the people of North Carolina reaffirmed their faith in Article VI of the State Constitution and in all of its provisions and provisos, excepting only the Indivisible Clause which was found in Section 5 of the Article. See Appellant's Brief, pages 23 and 24; Record before this Court, page 31. See also the Brief of Appellee, page 27, where Appellee admits that the State Supreme Court holds that the "Grandfather Clause" was readopted by reference "by the Amendment of 1945," in Appellee's own language, as follows:

> "The Grandfather Clause written into Article VI, Section 4 of the Constitution of North Carolina, in 1902, and readopted by reference by the amendment of 1945, as stated by the Supreme Court of North Carolina in the opinion from which this appeal is taken, was and is void and of no effect."

However, the State Supreme Court has never conceded that the "Grandfather Clause" was void or that its racial discriminatory purpose and reach had any effect upon the

literacy provision from which "grandfather electors" were presumably exempt and to which all members of Appellant's race were always subjected. (Record before this Court, page 31; *Lassiter* v. *Northampton County Board of Elections*, 248 N.C. 102, 102 S.E.2d 853, 3 Race Rel. Law Rep. 495.) The State Supreme Court, in the opinion below, did not overrule, repudiate or discredit its former decision upon the instant questions in *Allison* v. *Sharp, supra.* Instead, the State Supreme Court wholeheartedly embraced its decision in the above mentioned case, saying:

> "In this respect, the statute, then Section 5939 of the Consolidated Statutes, later G.S. 163-28, was the subject of judicial interpretation by this Court, in the case of *Allison* v. *Sharp*, 209 N.C. 477, 183 S.E. 57, decided 26 February, 1936. And the Court, in opinion by Clarkson, J., held it to be constitutional."

Moreover, in *Allison* v. *Sharp, supra*, the North Carolina Supreme Court held:

> "We think the act of the General Assembly is constitutional. .... The act of the General Assembly is no class legislation but applicable to all the citizens of the state. In fact, in the final analysis, plaintiffs do not challenge the constitutionality of Article 6, section 4, but only the statute passed to carry into effect the provisions of that section of the Constitution. It seems that, so far as plaintiffs are concerned, the action is moot or academic."

And it should be observed that the statute involved in *Allison* v. *Sharp, supra*, followed the State Constitutional text in every material detail, including the invidious "grandfather clause." The statute which the State Supreme Court held to be constitutional in *Allison* v. *Sharp, supra*, in 1936

(some twenty years after this Court's decision in *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.ed. 274—1915), read as follows:

> "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: Provided, however, that no male person who was, on January first, one thousand eight hundred and sixty-seven, or at any time prior thereto, entitled to vote under the laws of any state in the United States where he then resided, and no lineal descendant of such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualification aforesaid: Provided, that said elector shall have registered prior to December 1st, 1908, in accordance with article six, section four, of the Constitution and the laws made in pursuance thereto." North Carolina General Statute 163-28, as it read in 1936, at the time of the decision in *Allison* v. *Sharp*, *supra*.

Again, it should be observed that the North Carolina Supreme Court has never held that Article 8, Chapter 163 of the General Statutes of North Carolina, which provide permanent registration for "grandfather electors," is either invalid, unconstitutional, inoperative or even questionable. Compare *Clark* v. *Stateville*, 139 N.C. 490, 52 S.E. 52—1905, where the permanent registration statutes of "grandfather electors" was construed. Finally, the novel argument of Appellee that the legislative rewriting of North Carolina General Statute 163-28 and the repeal of the former North Carolina General Statute 163-28 were a repeal of Article 8, Chapter 163, of the General Statutes of North Carolina,

finds no support in the opinion below. The instant case was before the North Carolina Supreme Court for decision upon Appellant's specific Assignment of Errors that North Carolina General Statute 163-28, and the literacy test therein provided, were unconstitutional and discriminatory as against the 14th and 15th Amendments to the United States' Constitution (R. pp. 14, 15 and 16). However, the definitive rebuttal to Appellee's gratuitous suggestion—which is without documentation—that Section 5 of the legislative Act amending North Carolina General Statute 163-28 (See Appellee's Brief, pages 10, 11 and 32), and which only purported to repeal the prior North Carolina General Statute 163-28, also repealed the laws providing permanent registration for "grandfather electors" (North Carolina General Statute 163-32 et seq.), can be found in the decisions of the North Carolina Supreme Court. See *State* v. *Epps*, 213 N.C. 709, 197 S.E. 580, where a general repealing clause, such as Appellee relies upon in the instant case, is held to be inapplicable to another statute which is not "utterly irreconcilable" to the amended or rewritten statute. In *State* v. *Epps, supra*, the North Carolina Supreme Court explained:

> "In Chap. 49 Public Laws of 1937, it is noted that there is no clause specifically repealing the Turlington Act or any other provisions of the law relating to intoxicating liquor. *Of course, the statute does contain the usual general repealing clause. However, it has been held that such a clause does not operate to repeal an existing act unless the two acts are utterly irreconcilable. Repeals of statutes by implication are not favored, and, to work a repeal, the implication must be necessary. . . . . The common formula implies very strongly that other acts on the same subject are not repealed.*" (Emphasis added.)

See also, *Spaugh* v. *City of Charlotte*, 239 N.C. 149, 79 S.E. 2d 748; *McLean* v. *Durham County Board of Elections*, 222 N.C. 6, 21 S.E.2d 842.

Thus, it is seen that there is no substance to Appellee's position that Article 8, Chapter 163 of the North Carolina General Statutes have been repealed. Nor is there substance in Appellee's suggestion that this Court is barred from a view of these infectious enactments when ruling upon appellant's claim that the North Carolina "literacy test," as found in North Carolina General Statute 163-28 is rendered discriminatory and unconstitutional by virtue of infection from the permanent registration statutes. See *People of Illinois ex rel. McCollum* v. *Board of Education of School District No. 71, Champaign, Illinois*, 333 U.S. 203, 68 S.Ct. 461, 92 L.ed. 648, 2 A.L.R. 2d 1338; *St. Louis Southwestern Ry. Co.* v. *State of Arkansas*, 217 U.S. 136, 30 S.Ct. 476, 54 L.ed. 698; *Terminello* v. *Chicago*, 337 U.S. 1, 69 S.Ct. 894, 93 L.ed. 1131. And, the proposition that Appellant may only assert equality in the registration process, as distinguished from the final exercise of the franchise, is totally contrary to the decisions of this Court. See *Adams* v. *Terry*, 345 U.S. 461, 73 S.Ct. 809, 97 L.ed. 1152; *Smith* v. *Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.ed. 987. This is particularly true in view of the North Carolina statutory and constitutional provisions which make registration an indispensable prerequisite for voting, Article VI, Section 3, Constitution of North Carolina and North Carolina General Statute 163-27. See also *Pace* v. *Raleigh*, 140 N.C. 65, 52 S.E. 277.

II

The Briefs of the Appellee and of the Attorney General of North Carolina Amicus Curiae Have Erroneously Assumed That the People of North Carolina Had the Power in 1945 to Revive Section 4 of Article VI of the State Constitution in the Face of the 14th and 15th Amendments.

Although it is apparent from Appellee's Brief that had Appellee written the opinion below, it would have been pitched upon some basis other than the 1945 "revival" of Article VI of the State Constitution, the fact remains that the validity of the North Carolina "literacy test" was made by the State Supreme Court to hang upon the presumed revival in 1945 of Article VI of the State Constitution (R. pp. 30-33). Both the Appellee and the Attorney General of North Carolina have labored hard in a beguiling attempt to convince this Court that the only effect of the 14th and 15th Amendments to the Federal Constitution upon the North Carolina registration laws and their educational tests and racial exemptions therefrom, was the unenforceable, illusory, and effete shearing of the "grandfather clauses" from the state statutory and constitutional provisions. It appears, without doubt, that Appellee and the Attorney General of North Carolina have adopted the unfounded belief that Appellant's attack is upon the "grandfather clauses" themselves *rather than upon the educational tests provided by North Carolina General Statute 163-28 et seq. which are made racially discriminatory and infectious by virtue of the "grandfather clauses."* At the risk of sounding trite and redundant, Appellant reiterates her position: that she complains of discriminatory educational tests in ARGUMENT I of her Brief in this Court, as she complained in all of the Courts and forums below, which are rendered racially discriminatory because of grandfather clause. See

McFarland v. *American Sugar Refining Co.*, 241 U.S. 79, 36 S.Ct. 498, 60 L.ed. 899; *Harrison* v. *St. Louis and S. F. R. Co.*, 232 U.S. 318, 34 S.Ct. 333, 58 L.ed. 621; *Morey* v. *Doud*, 354 U.S. 457, 77 S.Ct. 1344, 1 L.ed. 1485. See also *Lane* v. *Wilson*, 307 U.S. 268, 59 S.Ct. 872, 83 L.ed. 1281; *Louise Lassiter* v. *Helen H. Taylor*, 152 F.Supp. 295, 2 Race Rel. Law Rep. 832; *General Motors Corp.* v. *Blevin*, 144 F.Supp. 381. In all of the above cited cases, the rule is indicated that where a statute is held to be discriminatory, the question of its severability from its more invidious base does not and cannot arise.

A reading of the opinion of the North Carolina Court indicates that the Court was of the erroneous impression that doctrine of severability of statutes would condemn only the "grandfather clauses" in the North Carolina laws and leave the adjunct educational provision intact. It is observed that this impression may have been gathered from an over-literal reading of this Court's opinion in the *Guinn* case, *supra*. This Court's opinion in the *Guinn* case indicates that after ruling upon "grandfather clause" therein contained under the 15th Amendment to the Federal Constitution, this Court proceeded to rule separately upon the educational test therein involved as though the education test *might* have had an independent constitutional status, uninfluenced by the annexed "grandfather clause," and that the survival of the educational test, after the demise of the "grandfather clause," was a question of state law. It is observed, however, that the *Guinn* case, *supra* involved a federal prosecution against an election official rather than the rights of a complaining applicant for the franchise, against whom a discriminatory educational test had been applied. It is next observed that in the *Guinn* case this Court might have decided the case upon the more plausible theory that the educational test itself was discriminatory and, hence, the educational qualifications for

voters were invalid by reason of federal law. See *McFarland* v. *American Sugar Refining Co., supra; Harrison* v. *St. Louis & S. F. R. Co., supra.* See also *Shelley* v. *Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.ed. 1161, 3 A.L.R. 2d 441; *Pennsylvania* v. *Board of Directors of City Trust,* 353 U.S. 230, 77 S.Ct. 806, 1 L.ed. 2d 792. It is respectfully submitted that the result reached in the *Guinn* case is eminently sound, though its rationale has never been employed in racial, discriminatory actions. See *Oyama* v. *State of California,* 332 U.S. 633, 68 S.Ct. 269.

III

The Briefs of the Appellee and the Attorney General of North Carolina Have Erroneously Assumed That the Doctrine of Revival, as Applied by the Court Below, Provides an Adequate Answer to Appellant's Contention That the North Carolina General Statute 163-28, and the Educational Test Therein Presumably Provided Are Violative of the 15th Amendment to the Federal Constitution.

No time need be wasted in stating the proposition that the people of North Carolina could not by an indirection, such as employment of the doctrine of revival, re-enacted the void registration laws in the manner and form as held by the State Supreme Court. See *Lassiter* v. *Taylor, supra; Lane* v. *Wilson, supra.* As a matter of common sense, as distinguished from federal constitutional principles, the invalidity of a statutory or constitutional enactment cannot be abrogated merely by successive re-enactments. See 82 C.J.S. (Statutes) Section 70(b). Again, Article VI, Section four of the North Carolina Constitution was as offensive, from a racial point of view, in 1945, as it was in 1902 or as it was when before the federal court in 1957. See *Lassiter* v. *Taylor, supra.* In view of the State Supreme Court's prior ruling in *Allison* v. *Sharp, supra,* and

in face of the 1957 Three Judge District Court's ruling in *Lassiter* v. *Taylor, supra*, it can be easily demonstrated that resort to the doctrine of a revival is nothing less than a mere cloak to conceal a well-founded federal question. Compare *Postal Telegraph Cable Co.* v. *Newport, Ky.*, 247 U.S. 464, 38 S.Ct. 566, 62 L.ed. 1215; *Ward* v. *Board of County Com'rs*, 253 U.S. 17, 40 S.Ct. 419, 64 L.ed. 751.

Conclusion

Concluding this Reply Brief, Appellant re-affirms all of the arguments made and suggested in her prior Brief and in the Record in this cause and respectfully submits that there is no merit in the arguments contained in the Briefs of Appellee or of the Attorney General of North Carolina. Appellant also contends that she is entitled to the relief for which she has prayed on this appeal.

Respectfully submitted,

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